



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

CASE OF HELLE v. FINLAND

(157/1996/776/977)

JUDGMENT

STRASBOURG

19 December 1997

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SUMMARY¹

Judgment delivered by a Chamber

Finland – consequences of respondent State’s reservation on applicant’s right to an oral hearing before an independent and impartial tribunal and whether the domestic proceedings were unfair on account of domestic courts’ alleged failure to state reasons for their decisions and/or to respect equality of arms principle

ARTICLE 6 § 1 OF THE CONVENTION

A. Applicability

Not disputed – Court sees no reason to find otherwise – there was a dispute over applicant’s right to pecuniary benefits, which was a “civil right” within the meaning of Article 6 § 1.

B. Compliance*1. Absence of oral hearing before independent and impartial tribunal*

Supreme Administrative Court was an independent and impartial tribunal with full appellate jurisdiction to review decisions of Cathedral Chapter and had discretion to organise an oral procedure – that Cathedral Chapter’s decisions were subject to control of a court satisfying requirements of Article 6 § 1 is sufficient for the purposes of compliance with that provision.

Admittedly Finland’s reservation had excluded a right to an oral hearing before Supreme Administrative Court – nevertheless, that reservation complied with substantive and procedural requirements of Article 64 of Convention – that applicant did not obtain an oral hearing at any stage of domestic proceedings must be seen as a consequence of the operation of a valid reservation – result not therefore incompatible with the Convention.

Conclusion: no violation (unanimously).

2. Alleged unfairness of domestic proceedings

Applicant cannot maintain that there was a breach of “equality of arms” – he availed himself of possibility to comment on opinions submitted by Cathedral Chapter to Supreme Administrative Court in both appeal proceedings.

Whether succinctness of reasons given by Supreme Administrative Court for rejecting applicant’s two appeals complied with Article 6 § 1 requirements to be determined in light of all circumstances of case – Supreme Administrative Court incorporated in its two decisions reasons given by Cathedral Chapter and appended latter’s decisions to its own rulings – Cathedral Chapter had given due consideration to applicant’s arguments on (1) his employment status and (2) level of compensation to which entitled – by incorporating reasons of Cathedral Chapter to reject applicant’s arguments, Supreme Administrative

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

Court indicated that it had no reasons of its own to depart from decisions of Cathedral Chapter and that applicant had not adduced any new arguments – Supreme Administrative Court had addressed essence of applicant's arguments and did not merely rubber-stamp decisions of Cathedral Chapter.

Conclusion: no violation (unanimously).

COURT'S CASE-LAW REFERRED TO

26.3.1992, Editions Périscope v. France; 27.10.1993, Dombo Beheer B.V. v. the Netherlands; 9.12.1994, Ruiz Torija v. Spain; 20.11.1995, British-American Tobacco Company Ltd v. the Netherlands; 23.10.1996, Ankerl v. Switzerland; 18.2.1997, Nideröst-Huber v. Switzerland; 26.8.1997, De Haan v. the Netherlands

In the case of Helle v. Finland¹,

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 B², as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,

Mr N. VALTICOS,

Mr I. FOIGHEL,

Mr R. PEKKANEN,

Mr A.N. LOIZOU,

Mr L. WILDHABER,

Mr D. GOTCHEV,

Mr B. REPIK,

Mr P. VAN DIJK,

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

Having deliberated in private on 25 September and 27 November 1997,

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. 20772/92) against the Republic of Finland lodged with the Commission under Article 25 by a Finnish citizen, Mr Pekka Helle, on 28 September 1992.

The Commission’s request referred to Articles 44 and 48 and to the declaration whereby Finland 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.

2. In response to the enquiry made in accordance with Rule 35 § 3 (d) of Rules of Court B, the applicant designated the lawyers who would represent him (Rule 31).

Notes by the Registrar

1. The case is numbered 157/1996/776/977. 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 B, which came into force on 2 October 1994, apply to all cases concerning States bound by Protocol No. 9.

3. The Chamber to be constituted included *ex officio* Mr R. Pekkanen, the elected judge of Finnish nationality (Article 43 of the Convention), and Mr R. Ryssdal, the President of the Court (Rule 21 § 4 (b)). On 21 January 1997, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr L.-E. Pettiti, Mr B. Walsh, Mr N. Valticos, Mr I. Foighel, Mr A.N. Loizou, Mr L. Wildhaber and Mr P. van Dijk. Subsequently Mr D. Gotchev and Mr B. Repik, substitute judges, replaced Mr Pettiti and Mr Walsh who were unable to take part in the further consideration of the case (Rule 22 §§ 1 and 2 and Rule 24 §1).

4. As President of the Chamber (Rule 21 § 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Finnish Government (“the Government”), the applicant’s lawyers and the Delegate of the Commission on the organisation of the proceedings (Rules 39 § 1 and 40). Pursuant to the order made in consequence on 10 March 1997, the Registrar received the Government’s memorial on 24 June 1997 and the applicant’s memorial on 7 July 1997.

5. In accordance with the President’s decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 24 September 1997. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- (a) *for the Government*
 - Mr H. ROTKIRCH, Ambassador, Director General
for Legal Affairs, Ministry for Foreign Affairs, *Agent,*
 - Mr A. KOSONEN, Ministry for Foreign Affairs, *co-Agent;*
 - Ms T. LYBECK, Ministry of Education,
 - Ms A. MANNER, Ministry of Justice, *Advisers;*
- (b) *for the Commission*
 - Mr M.P. PELLONPÄÄ, *Delegate;*
- (c) *for the applicant*
 - Mr H. SALO, *Advokat*, Helsinki Bar,
 - Mr J. KORTTEINEN, Assistant Professor,
University of Helsinki, *Counsel.*

The Court heard addresses by Mr Pellonpää, Mr Salo, Mr Kortteinen and Mr Rotkirch.

AS TO THE FACTS

I. PARTICULAR CIRCUMSTANCES OF THE CASE

A. The applicant

6. The applicant, Mr Pekka Helle, is a retired verger of the Evangelical-Lutheran parish of Mäntsälä. According to the applicant his family have for four generations provided a verger to the parish.

7. Although he had performed duties for the parish since 1952, it was only on 21 September 1966 that a decision (hereinafter, “the 1966 decision”) was taken by the Parish Council (*kirkkovaltuusto*, *kyrkofullmäktige*) to establish officially the post of verger and to confirm the applicant as the verger (see paragraph 8 below).

B. The 1966 decision of the Parish Council and the creation of the post of verger

8. In creating the post, the Parish Council noted that the Parish Management Board (*kirkkohallintokunta*) had proposed that the verger be paid 75% of the salary on the Grade 9 salary scale for employees of the Evangelical-Lutheran Church. However the Parish Council ultimately decided that the verger’s post was to be considered as the main occupation (*päätoimi*) of the post holder and the holder remunerated according to Grade A3 of the salary scale. In salary terms, this in fact amounted to the same level of remuneration as suggested by the Parish Management Board. However, there was no indication as to whether it was a full-time or part-time post. The Parish Council further decided that Mr Helle, as the post holder, should not be remunerated for the performance of any extra duties and that he should be authorised, as was proposed by the Parish Management Board, to manage a funeral home.

C. The new collective agreement arrangements

9. As from the beginning of 1975 a new collective agreement for Church employees came into force. Under that agreement a new salary scheme was introduced under which salaries were fixed in respect of the various posts and the terminology was clarified so that a main occupation of a Church

employee could henceforth either be full-time or part-time. The new salary system was applied in 1977 to the Church employees of the parish of Mäntsälä.

D. The 1977 decision of the Parish Board

10. In a decision taken on 16 November 1977 (hereinafter “the 1977 decision”) in the context of the application of the new collective agreement arrangements to its employees, the Parish Board ((*kirkkoneuvosto, kyrkorådet*) noted that the decision of the Parish Council of 21 September 1966 creating the post of verger (see paragraph 8 above) did not specify whether that post was full-time or part-time. The view was taken that since the Parish Management Board at the relevant time had proposed that Mr Helle be granted permission to manage a funeral home it was probable that his post was a part-time main occupation.

The Parish Board confirmed that the verger’s working hours were thirty-five hours per week and that his salary was 87% of that payable to a full-time verger on the revised salary scales. The applicant’s salary however remained the same as before. Further, the Parish Board authorised Mr Helle to manage a funeral home alongside his duties as verger.

11. From the moment of taking up his employment as verger, the applicant carried out his duties on the understanding that his post was in fact a full-time one. He was never informed of the 1977 decision and its implications were not apparent to him since he continued to receive the same salary and to work forty hours per week.

12. It was only in December 1988 when he enquired about his pension rights that he reached the conclusion that the Parish Board had in 1977 considered his post to be part-time and that some of his salary-related entitlements including pension rights were as a consequence lower than those of a full-time post holder.

E. The legal proceedings

13. On 9 January 1989 the applicant appealed against the 1977 decision to the Parish Council claiming arrears of salary owed to him as a full-time parish verger and other lost benefits.

1. *The Parish Council decision of October 1989*

14. In its decision of 10 October 1989 the Parish Council noted that, according to the decision of the Parish Board of 16 November 1977 (see paragraph 10 above), Mr Helle's post was a part-time main occupation. The Parish Council considered that it was not legally obliged to grant the applicant any pecuniary benefits in addition to those he already received on the basis of the 1977 decision of the Parish Board (see paragraph 10 above). It nevertheless decided on an *ex gratia* basis that the applicant should be paid the difference between his part-time salary and a full-time salary as from 1 January 1987. It also increased his pension benefits and awarded him a compensatory lump sum.

2. *The decision of the Cathedral Chapter of June 1990*

15. In the meantime, on 25 January 1989, the applicant had also lodged an appeal with the Cathedral Chapter (*tuomiokapituli, domkapitlet*) of the Helsinki Diocese (*hiippakunta, stift*), complaining that the Parish Board's 1977 decision amounted to a unilateral change by the Board to the nature of his post and had prejudiced him financially. Under section 443 of the Church Act 1964 (*kirkkolaki, kyrkolag* 635/64), the Cathedral Chapter acted as "a court of first instance" in cases concerning salary claims of parish officials.

On 15 November 1989, following the Parish Council's decision of 10 October 1989, the applicant lodged a supplementary appeal with the Cathedral Chapter, complaining about the low level of the benefits granted to him in that decision and claiming, *inter alia*, compensation.

16. The Cathedral Chapter joined the two appeals. In its decision of 1 June 1990 it stated that the applicant had *locus standi* and that the appeal could not be considered as time-barred since the applicant had not been notified of the 1977 decision as required by Finnish law (see paragraph 11 above). As regards the merits, the Cathedral Chapter noted that, in its opinion, the 1977 decision of the Parish Board was primarily a decision on the working hours for the verger's post. It had not been possible to ascertain from the documents produced in the case whether the post in question was created in 1966 as a full-time or part-time main occupation. In any event, the Parish Board lacked the competence to convert a full-time post into a part-time one since the Parish Council was solely competent in 1977 to take such a decision. On the other hand, the Parish Board's specification of the

working hours for the post had been the basis for the revised method of calculating salaries under the new collective agreement arrangements.

On these grounds the Cathedral Chapter found that the 1977 decision had not altered the applicant's post from a full-time to a part-time one. In view of the fact that the parish had sole competence to decide on the working hours for a post, the Cathedral Chapter dismissed the verger's appeal in that regard. It further considered that it was not competent to examine his claims for compensation and dismissed this part of the appeal without examining the merits.

3. The decision of the Supreme Administrative Court of March 1991

17. On 28 June 1990 the applicant appealed against the Cathedral Chapter's decision to the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*), claiming that the decisions of the Cathedral Chapter, the Parish Council and the Parish Board should be repealed and that he should be compensated for the financial loss suffered since 1 January 1978 through not being recognised as a full-time verger.

At the Supreme Administrative Court's request, the Cathedral Chapter submitted on 5 September 1990 an opinion in which it stated that the appeal should be rejected. The applicant filed his comments on the opinion on 16 October 1990.

18. In a decision of 8 March 1991 the Supreme Administrative Court, without having held an oral hearing, upheld the Cathedral Chapter's decision as regards the effects of the 1977 decision, finding no reason to alter it. On the other hand, the Supreme Administrative Court considered that the Cathedral Chapter did have jurisdiction to examine the dispute regarding his compensation claim and therefore referred the case back for fresh examination.

The Cathedral Chapter's decision of 1 June 1990 was appended to the decision of the Supreme Administrative Court but the latter decision did not refer to the Cathedral Chapter's opinion or to the applicant's comments thereon.

4. The decision of the Cathedral Chapter of August 1991

19. In a fresh appeal of 31 May 1991 to the Cathedral Chapter the applicant maintained his previous complaints in respect of both the 1977 decision and the level of compensation set by the earlier decision of the Parish Council. Moreover, he maintained that in the event of the Cathedral Chapter not being satisfied that his post had been full-time since its creation, he requested the Cathedral Chapter to hold an oral hearing and hear witnesses on the matter.

In this connection, the applicant submitted a written statement by six former members of the Parish Council who had participated in the creation of his post in 1966. In their view, the Parish Council had been aware of the fact that the anticipated number of working hours clearly sufficed for the purposes of a full-time post and it had therefore rejected a proposal to establish a part-time post.

The applicant also submitted a written statement of his trade union to the effect that the parish had never contested the fact that he had worked at least forty hours per week, although he had only been paid a salary based on thirty-five hours per week. The fact that he had (in 1966) been granted permission to have a secondary occupation (to manage a funeral home) had not entitled the parish to amend his employment contract unilaterally.

20. In its decision of 29 August 1991 the Cathedral Chapter took account of the various written statements submitted in support of the applicant's claims. Having regard to the evidence adduced and to the fact that it had not been possible to submit further evidence concerning his working hours especially as the applicant had a secondary occupation closely related to his duties as verger, the Cathedral Chapter upheld the decision of the Parish Council of 10 October 1991 and rejected his other claims for compensation for lack of sufficient evidence. The applicant's request for an oral hearing was not mentioned in the decision.

5. The decision of the Supreme Administrative Court of March 1992

21. The applicant appealed to the Supreme Administrative Court against the decision of the Cathedral Chapter, claiming that the compensation had been fixed at too low a level.

22. On 11 December 1991 the Cathedral Chapter, at the request of the Supreme Administrative Court, submitted a further opinion to the court in which it stated that the applicant's appeal should be rejected. The applicant filed his comments on the opinion on 16 January 1992.

23. On 31 March 1992 the Supreme Administrative Court, without holding an oral hearing, upheld the Cathedral Chapter's decision of 29 August 1991, finding no reason to alter it. The decision referred to section 538b of the Church Act 1984 as well as to the Regulations on Posts and Salaries of the parish as adopted by the Cathedral Chapter in 1988. According to section 538b the terms of employment for posts within the Church were to be specified in regulations adopted by the Church Assembly (*kirkolliskokous*, *kyrko-mötet*), to the extent that they were not indicated in already existing regulations and collective agreements.

The decision of the Cathedral Chapter of 29 August 1991 was appended to the decision of the Supreme Administrative Court but the latter decision did not refer to the Cathedral Chapter's opinion or to the applicant's comments thereon.

II. RELEVANT DOMESTIC LAW

24. Under the Church Act 1964 (*kirkkolaki, kyrkolag* 635/64) a decision by the Church Council could be appealed against to the Cathedral Chapter by any person claiming that the decision entailed a violation of his or her private rights (section 323 (1) as in force at the relevant time).

25. The Cathedral Chapter is both an administrative and a judicial body of the Diocese (section 432). At the relevant time its members included the Bishop, as the chair, three Church assessors and one legal assessor. One of the Church assessors was Dean of the Cathedral Congregation (*tuomiokirkko-seurakunnan tuomiorovasti, domkyrkoförsamlingens domprost*) and also Vice-Chairman of the Cathedral Chapter. The two others were elected by the priests and curates of the Diocese from among its permanent priests. The Church assessors sat for a period of three years. As long as they were priests in the same parish or parish confederation they could not sit on the Cathedral Chapter for more than two periods. The legal assessor was a lawyer appointed by the Cathedral Chapter (sections 433-435).

26. The statutory rules on the disqualification of judges extended to the members of the Cathedral Chapter (section 436 (3)). Before taking up their duties, the members had to swear a judicial oath (section 437).

27. In determining cases brought before it, the Cathedral Chapter was to base itself on the case file. If it was deemed necessary to hear witnesses, evidence was to be taken by an ordinary court of first instance on request by the Cathedral Chapter submitted via the County Administrative Board (section 455).

On 1 January 1994 the 1964 Act was replaced by the 1993 Church Act (*kirkkolaki, kyrkolag* 1054/93) which expressly provides that the Cathedral Chapter may hold oral hearings (Chapter 19, sections 6 and 7).

28. Under section 15 of the Supreme Administrative Court Act 1918 (no. 74/18), in order to clarify the circumstances of the case, the Supreme Court may request opinions and reports, hold oral hearings and carry out an investigation. Under the 1996 Act on Judicial Procedure in Administrative Matters (*hallintolainkäyttölaki, förvaltningsprocesslag* 588/96 – “the 1996 Act”, which entered into force on 1 December 1996) the Supreme Administrative Court must hold an oral hearing if a private party has requested this, but may nevertheless refuse this in certain circumstances (section 38 (1)).

III. FINLAND'S RESERVATION TO ARTICLE 6 § 1 OF THE CONVENTION

29. The instrument of ratification of the Convention deposited by the Finnish Government on 10 May 1990 contained the following reservation, made in accordance with Article 64 of the Convention, in respect of the right to a public hearing guaranteed by Article 6 § 1:

“ For the time being, Finland cannot guarantee a right to an oral hearing insofar as the current Finnish laws do not provide such a right. This applies to:

1. proceedings before the Courts of Appeal, the Supreme Court, the Water Courts and the Water Court of Appeal in accordance with Chapter 26 Sections 7 and 8, as well as Chapter 30 Section 20, of the Code of Judicial Procedure, and Chapter 15 Section 23, as well as Chapter 16 Sections 14 and 39, of the Water Act;

2. proceedings before the County Administrative Courts and the Supreme Administrative Court in accordance with Section 16 of the County Administrative Courts Act and Section 15 of the Supreme Administrative Court Act;

3. proceedings, which are held before the Insurance Court as the Court of Final Instance, in accordance with Section 9 of the Insurance Court Act;

4. proceedings before the Appellate Board for Social Insurance in accordance with Section 8 of the Decree on the Appellate Board for Social Insurance.

The provisions of the Finnish laws referred to above are attached to this reservation as a separate annex.”

30. According to the annex to the above reservation, the relevant part of section 15 of the Supreme Administrative Court Act reads:

“In investigating a case, the Supreme Administrative Court may ... hold oral hearings ... In an oral hearing the parties, witnesses and experts may be heard, and other evidence may be taken.

The Supreme Administrative Court may decide that oral hearings ... be conducted by one or more members of the Court together with the referendary.”

31. On 20 December 1996, following the entry into force of the 1996 Act, Finland withdrew the above reservation, *inter alia*, in respect of proceedings before the Supreme Administrative Court concerning decisions taken after 1 December 1996.

PROCEEDINGS BEFORE THE COMMISSION

32. The applicant lodged his application (no. 20772/92) with the Commission on 28 September 1992. He complained that, in breach of Article 6 § 1 of the Convention, he had not been afforded a fair and oral procedure before an independent and impartial tribunal in the domestic proceedings. In addition, he alleged that he had been subjected to discrimination in breach of Article 14 in conjunction with Article 6 § 1. Finally, he claimed that the refusal of the Finnish authorities to award him all the benefits to which he was entitled as the holder of a full-time post since 1966 gave rise to a violation of Article 1 of Protocol No. 1 to the Convention.

33. On 7 March 1996 the Commission declared admissible the applicant's complaint under Article 6 § 1 of the Convention and declared the remainder of his complaint inadmissible. In its report of 15 October 1996 (Article 31), it expressed the opinion that there had been no violation of Article 6 § 1 on account of the absence of an oral hearing before an independent and impartial tribunal (unanimously) and no violation of the same provision with regard to the fairness of the domestic proceedings (twenty-five votes to five). The full text of the Commission's opinion and of the two separate opinions contained in the report is reproduced as an annex to this judgment¹.

FINAL SUBMISSIONS TO THE COURT

34. The applicant requested the Court to find that he was denied the right to a fair and oral procedure before an independent and impartial tribunal, in breach of Article 6 § 1 of the Convention. He also requested the Court to award him just satisfaction under Article 50 of the Convention.

The Government maintained that the conduct of the domestic proceedings disclosed no breach of the requirements of Article 6 § 1 and accordingly no award should be made to the applicant under Article 50.

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 1997*), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

35. Mr Helle contended that he had never received an oral hearing before an independent and impartial tribunal at any stage of the domestic proceedings nor obtained adequate reasons from the Cathedral Chapter or the Supreme Administrative Court for their rejection of his claims. Moreover, the fairness of the procedure before the Supreme Administrative Court was vitiated on account of the influence exerted by the Cathedral Chapter on the proceedings. He pleaded that these basic shortcomings in the domestic proceedings must be seen as a breach of Article 6 § 1 of the Convention which provides, to the extent relevant:

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

The Government contested the applicant's assertions. The Commission concluded that there had been no breach of the guarantees laid down in Article 6 § 1 in the impugned domestic proceedings.

A. Applicability of Article 6 § 1

36. It was not contested that the proceedings taken by the applicant involved the determination of his civil rights and that Article 6 § 1 was accordingly applicable.

37. The Court sees no reason to reach a contrary conclusion. The applicant and his employer, the parish, were in dispute over his claim to have held a full-time post since 1966 and to be entitled to the remuneration and related financial benefits associated with such a post. The rights invoked by the applicant were pecuniary in nature and thus fell within the category of “civil” rights, irrespective of the administrative nature of the proceedings in issue (see, *mutatis mutandis*, the Editions Périscope v. France judgment of 26 March 1992, Series A no. 234-B, p. 66, § 40).

Article 6 § 1 is therefore applicable.

B. Compliance with Article 6 § 1*1. As to the absence of an oral hearing before an independent and impartial tribunal*

38. The applicant maintained that at no stage in the proceedings before the Parish Council, the Cathedral Chapter and the Supreme Administrative Court had he been given an opportunity to state his case orally. Notwithstanding the fact that he may not have specifically requested the Supreme Administrative Court to hold an oral hearing there were compelling public-interest reasons which should have persuaded that court to organise an oral procedure of its own motion. In the first place, the Supreme Administrative Court provided the only independent and impartial judicial forum for challenging the 1977 decision of the Parish Board, having regard to the fact that the Cathedral Chapter was an administrative body with appellate functions within the Evangelical-Lutheran Church and was closely associated with the interests of his employer, the parish. In brief, it lacked, as did the Parish Council, the essential qualities of independence and impartiality required of a tribunal within the meaning of Article 6 § 1 of the Convention. Secondly, it was crucial to the success of his case that he be given an opportunity at some stage in the litigation to argue points of fact and law and to call and have questioned his witnesses who could confirm that it was the intention of the Parish Council in 1966 to establish a full-time post of verger.

The applicant further contended that the Cathedral Chapter was under a duty to organise an oral hearing since it had not been included in the exhaustive list of tribunals covered by the terms of Finland's reservation. Its failure to do so, despite his request (see paragraph 19 above), should have been remedied on appeal by the Supreme Administrative Court itself holding an oral procedure.

39. At the hearing the applicant claimed that his grievances could not be countered by the argument that Finland's reservation (see paragraph 29 above) provided a watertight defence to the lack of an oral hearing at all stages of the proceedings. To allow the reservation to produce such general and far-reaching effects in the domestic legal order would be contrary to the requirements of Article 64 of the Convention.

40. The Government stressed that the decisions of the Cathedral Chapter, irrespective of whether or not it could properly be referred to as an independent and impartial tribunal within the meaning of Article 6 § 1, were subject to the supervision of the Supreme Administrative Court in the exercise of the latter's appellate jurisdiction.

The independence and impartiality of that court had never been disputed. While it was true that the Cathedral Chapter had not held an oral hearing when adjudicating on the applicant's grievances, the organisation of an oral procedure before the Supreme Administrative Court would have fully met the requirements of Article 6 § 1 in this respect and compensated for the deficiencies in the proceedings before the Cathedral Chapter. This was all that was required under Article 6 § 1.

41. It was true that the Supreme Administrative Court did not hold an oral hearing in the appeal proceedings. However, the applicant had never in fact requested the Supreme Administrative Court to organise an oral procedure and he could be considered to have waived his right to one; nor did there appear to be any reasons of public interest which would have compelled the Supreme Administrative Court to do so given that the dispute in reality concerned the applicant's entitlement to additional financial benefits.

Notwithstanding this point, the Government stressed as a primary submission that Finland's reservation clearly applied to proceedings before the Supreme Administrative Court and provided a complete defence to the absence of an oral procedure in the applicant's proceedings on appeal. That reservation was fully compatible with the substantive and procedural requirements of Article 64 of the Convention.

42. The Commission agreed with the Government's conclusions on the efficacy of the guarantees offered by the Supreme Administrative Court to remedy the absence of an oral hearing before the Cathedral Chapter and any doubts as to the latter's independence and impartiality. Admittedly the Supreme Administrative Court never held an oral procedure. However, Finland's reservation had validly excluded the right to such a procedure before that court. The Commission concluded therefore that there had been no violation of Article 6 § 1.

43. The Court notes at the outset that the application of Finland's reservation to the proceedings before the Supreme Administrative Court is central to the Government's argument that the absence of an oral hearing before that court cannot be impugned under Article 6 § 1. The merits of that contention depend on the validity of that reservation, which falls to be assessed from the standpoint of Article 64 of the Convention. Article 64 provides:

“1. Any State may, when signing [the] Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this Article.

2. Any reservation made under this Article shall contain a brief statement of the law concerned.”

44. Having regard to the terms of the reservation the Court, like the Commission, takes the view that it satisfied the substantive and procedural requirements of Article 64. In particular, it cannot be construed as a reservation of a general character. The scope of the reservation was, at the relevant time (see paragraph 31 above), limited to relieving the Supreme Administrative Court and certain other defined courts (see paragraphs 29 and 30 above) from the obligation to hold an oral hearing, having regard to the domestic laws then in force, including section 15 of the Supreme Administrative Court Act 1918. It must be concluded therefore that the reservation was valid and that Finland was not under a Convention obligation to ensure that an oral hearing took place before the Supreme Administrative Court.

45. As to the Cathedral Chapter's refusal to hold an oral hearing when deciding afresh on the compensation issue (see paragraph 19 above), the Court observes that it has not been disputed by the applicant that the decisions of the Cathedral Chapter were subject to the full jurisdictional supervision of the Supreme Administrative Court acting as an independent and impartial tribunal. That court was competent to examine all questions of fact and law submitted to its appellate jurisdiction and could at the relevant time, in accordance with section 15 of the Supreme Administrative Court Act 1918 (see paragraph 28 above), have held an oral hearing allowing the applicant to state his case and, as appropriate, call witnesses in support of his claims. In these circumstances it must be concluded that the two sets of appeal proceedings which the applicant lodged before the Supreme Administrative Court (see paragraphs 17 and 21 above) were capable of ensuring reparation of, firstly, the absence of an oral hearing before the Cathedral Chapter either on the issue of the effects of the 1977 decision or on the level of compensation fixed by the Parish Council (see paragraph 14 above) and, secondly, of any perceived shortcomings in the Cathedral Chapter's independence and impartiality.

46. The Court recalls in this regard that, according to its settled case-law, a violation of Article 6 § 1 of the Convention cannot be grounded on the alleged lack of independence or impartiality of a decision-making tribunal or the breach of an essential procedural guarantee by that tribunal if the decision taken was subject to subsequent control by a judicial body that has full jurisdiction and ensures respect for the guarantees laid down in that provision (see, for example, the *British-American Tobacco Company Ltd v. the Netherlands* judgment of 20 November 1995, Series A no. 331, pp. 25-26, § 78; and, most recently, the *De Haan v. the Netherlands* judgment of 26 August 1997, *Reports of Judgments and Decisions* 1997-IV, p. 1393, § 52).

47. As the Court noted previously (see paragraph 44 above), Finland was under no Convention obligation to ensure in respect of the Supreme Administrative Court that an oral hearing was held, having regard to the

terms of Finland's reservation (see paragraphs 29 and 44 above). While it is true that the effect of the reservation was to deny Mr Helle a right to an oral hearing before an independent and impartial tribunal, this result must be considered to be compatible with the Convention and a consequence of the operation of a valid reservation. The aim of the reservation was to relieve the Supreme Administrative Court from the Convention requirement to hold an oral hearing during a transitional period and that requirement cannot be re-imposed during the subsistence of the reservation's validity in order to compensate for the absence of such a hearing downstream in the domestic legal order.

48. The Court accordingly concludes that there has been no breach of Article 6 § 1 of the Convention under this head of complaint.

2. As to the alleged unfairness of the proceedings

49. The applicant further maintained that the Cathedral Chapter was able to exercise a preponderant influence in the proceedings before the Supreme Administrative Court since it submitted opinions on two occasions for the consideration of the latter court (see paragraphs 17 and 22 above) calling for the applicant's appeals to be dismissed. The fact that he was able to comment on each of those opinions could not redress the unfairness caused by the intervention of the Cathedral Chapter in this manner in the proceedings since the Cathedral Chapter was in reality his opponent, having regard to the fact that it served the interests of his employer.

50. More importantly, the Cathedral Chapter and the Supreme Administrative Court failed to address his submissions that he occupied a full-time post, which was central to the success of his case. He had placed before the Cathedral Chapter the statements of witnesses affirming with first-hand knowledge that the Parish Council had intended to create a full-time post in 1966 (see paragraph 19 above). The minutes of the Parish Council's meeting were also adduced in support of that conclusion. Notwithstanding the weight of this evidence there were no indications in the decisions reached by the Cathedral Chapter and by the Supreme Administrative Court on appeal as to why his evidence was considered insufficient or how it was evaluated.

For the above reasons, it must be concluded that, taken as a whole, the domestic proceedings failed to meet the requirements of Article 6 § 1.

51. The Government contended that neither of the applicant's complaints could support the conclusion that the proceedings before the Cathedral Chapter or the Supreme Administrative Court were unfair.

In the first place, the applicant was given the opportunity to file his comments on both the opinions submitted by the Cathedral Chapter. Since he did in fact avail himself of this opportunity on two occasions (see paragraphs 17 and 22 above) it could not be maintained that he was placed at a substantial disadvantage in the proceedings *vis-à-vis* the parish.

Secondly, whether or not the reasons given by the Cathedral Chapter and the Supreme Administrative Court for rejecting the applicant's complaints met the requirements of Article 6 § 1 had to be determined on the basis of all the circumstances of the case at issue, including the nature of the dispute. Admittedly, the reasons given were succinct. However, given that the Cathedral Chapter and the Supreme Administrative Court considered that the applicant's claim that he occupied a full-time post was based on unconvincing arguments, they both felt obliged on the basis of the case file to reject the claim for lack of sufficient evidence. The reasons which they gave in this respect were founded on the decision taken by the Parish Council in October 1989 and it would have been inappropriate to restate *in extenso* the reasons which the Parish Council used to reach its decision. In these circumstances it cannot be maintained that the brevity of the reasons for the decisions of either the Cathedral Chapter or the Supreme Administrative Court failed to meet the requirements of Article 6 § 1.

52. The Commission agreed with the Government's conclusions on both of the applicant's complaints and the reasons they adduced in support thereof. It considered that the domestic proceedings taken as a whole complied with the requirements of a fair procedure within the meaning of Article 6 § 1.

53. The Court stresses that its task is not to clarify the status of the post which was established by the Parish Council in 1966 nor to adjudicate on whether the Parish Board altered the nature of that post in its 1977 decision. Those issues fell to be determined in the course of the domestic proceedings launched by the applicant against the background of the evidence adduced and in application of the relevant national law. The Court's task is to assess whether or not those proceedings taken as a whole were fair within the meaning of Article 6 § 1 having regard to all the relevant circumstances, including the nature of the dispute and the character of the proceedings in issue, the way in which the evidence was dealt with and whether the proceedings afforded the applicant an opportunity to state his case under conditions which did not place him at a substantial disadvantage *vis-à-vis* his employer (see, *mutatis mutandis*, the *Dombo Beheer B.V. v. the Netherlands* judgment of 27 October 1993, Series A no. 274, pp. 18–19, § 31; the *Ankerl v. Switzerland* judgment of 23 October 1996, Reports 1996-V, pp. 1567–68, § 38; the *Nideröst-Huber v. Switzerland* judgment of 18 February 1997, Reports 1997-I, p. 115, § 31).

54. Mr Helle is arguing in his first submission that he was placed at a substantial disadvantage on account of the fact that the Cathedral Chapter was requested on two occasions by the Supreme Administrative Court to give its opinion on the merits of his appeals. The Court does not agree with this contention. Any possible prejudice which may have been occasioned to the outcome of his appeals was offset by the fact that he was given a real

and genuine opportunity by the Supreme Administrative Court to submit his own comments on the content of the Cathedral Chapter's opinions. It is to be noted that he availed himself of this opportunity on two occasions. In the circumstances he cannot maintain that there was a breach of the requirement of "equality of arms" inherent in the concept of a fair procedure (see the above-cited Ankerl and Nideröst-Huber judgments).

55. In his second submission Mr Helle has contended that the fairness of the domestic proceedings was vitiated on account of the failure of the Cathedral Chapter and the Supreme Administrative Court to articulate clearly the reasons which led them to reject his interpretation of the 1966 decision and the evidence which he had adduced to that end. The Court notes in this context that while Article 6 § 1 obliges the courts to give reasons for their judgments, it cannot be understood as requiring a detailed answer to every argument adduced by a litigant. The extent to which the duty to give reasons applies may vary according to the nature of the decision at issue. It is moreover necessary to take into account, *inter alia*, the diversity of the submissions that a litigant may bring before the courts and the differences existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments. That is why the question whether a court has failed to fulfil the obligation to state reasons, deriving from Article 6 of the Convention, can only be determined in the light of the circumstances of the case (see the Ruiz Torija v. Spain judgment of 9 December 1994, Series A no. 303-A, p. 12, § 29).

56. Having regard to these considerations it is to be noted that the justification given by the Supreme Administrative Court for upholding the decisions of the Cathedral Chapter, firstly, on the issue of the effects of the 1977 decision and, secondly, on the level of compensation set by the Parish Council was that it found no reason to alter these decisions (see paragraphs 17 and 22 above). It would appear to the Court that the Supreme Administrative Court in reaching its decisions incorporated the reasons given by the Cathedral Chapter for the latter's own decisions on these issues. It is significant in this respect that the decisions of the Cathedral Chapter were appended to both appeal decisions which the Supreme Administrative Court delivered. Whether or not the reasoning by incorporation technique used by the Supreme Administrative Court satisfied the requirements of Article 6 § 1 of the Convention in the circumstances of the instant case must be answered accordingly by reference to the grounds invoked by the Cathedral Chapter to reject the evidence adduced by the applicant and to dismiss his complaints. It is to be stressed in this respect that it is not for the Court to substitute its views for those of the Cathedral Chapter as regards the weight to be given to the evidence before it or the importance to be attached to particular submissions.

57. The Court observes that the 1977 decision of the Parish Board lay at the heart of the domestic proceedings. It was the clear conclusion of the Cathedral Chapter in its June 1990 decision (see paragraph 16 above) that the Parish Board lacked the competence to transform a post from a full-time to a part-time one and that any decision taken by the Parish Board with respect to the applicant's post only served as a confirmation of his working hours for the purposes of the application of the new collective agreement arrangements. It is to be noted in this respect that the Cathedral Chapter had due regard to the documents produced in the proceedings but did not consider them to be sufficient to support the applicant's assertions that the 1966 decision established a full-time post of verger (see paragraph 16 above). It is also to be observed that the reasoning of the Cathedral Chapter goes further than that used by the Parish Council in its October 1989 decision since the latter decision does not refer to the Parish Board's lack of competence to change the nature of a post. Having regard to the requirements of Article 6 § 1 the Court finds no fault with the way in which the Cathedral Chapter dealt with the evidence before it nor with the adequacy of the reasons which it adduced to ground its rejection of the applicant's appeal.

58. As to the second set of proceedings before the Cathedral Chapter, it is to be observed that the sole issue which had been remitted for examination was the adequacy of the level of compensation fixed by the Parish Council in its October 1989 decision (see paragraph 19 above). As to that issue, the applicant sought to adduce evidence that he had worked a forty-hour week since assuming the office of verger in 1966. However the Cathedral Chapter, in full cognisance of the written evidence presented by the applicant, concluded that that evidence did not substantiate his claim especially since he ran a funeral home alongside his duties as verger, a factor which would have a bearing on the calculation of the hours worked. The Court considers that the reasons given by the Cathedral Chapter for confirming the level of compensation fixed by the Parish Council and its evaluation of the evidence before it cannot be criticised from the standpoint of Article 6 § 1.

59. As noted above, the reasons given by the Cathedral Chapter were adopted twice on appeal by the Supreme Administrative Court by process of incorporation, thus clearly indicating that the latter court had no reasons of its own to depart from the conclusions reached by the Cathedral Chapter and that the applicant had not presented any new submissions which would have had a bearing on the appeal; nor can it be maintained in the circumstances that the Supreme Administrative Court did not address the essence of the points submitted by the applicant for its consideration. It is significant in this respect that the Supreme Administrative Court remitted the issue of

compensation back to the Cathedral Chapter thereby confirming that it took a fresh and considered approach to the submissions before it (see paragraph 18 above).

60. Having regard to these considerations, the Court would emphasise that the notion of a fair procedure requires that a national court which has given sparse reasons for its decisions, whether by incorporating the reasons of a lower court or otherwise, did in fact address the essential issues which were submitted to its jurisdiction and did not merely endorse without further ado the findings reached by a lower court. This requirement is all the more important where a litigant has not been able to present his case orally in the domestic proceedings. However, the Court concludes that this requirement was satisfied in the particular circumstances of the instant case and that the proceedings in issue were not rendered unfair on the grounds invoked by the applicant.

61. The Court concludes accordingly that there has been no violation of Article 6 § 1 under this head of complaint either.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been no violation of Article 6 § 1 of the Convention with respect to the absence of an oral hearing before an independent and impartial tribunal;
2. *Holds* that there has been no violation of Article 6 § 1 of the Convention with regard to the fairness of the proceedings.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 19 December 1997.

For the President
Signed: Pieter VAN DIJK
Judge

Signed: Herbert PETZOLD
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 55 § 2 of Rules of Court B, the concurring opinion of Mr van Dijk, joined by Mr Foighel and Mr Repik, is annexed to this judgment.

Initialed: P. v .D.
Initialed: H. P.

**CONCURRING OPINION OF JUDGE VAN DIJK,
JOINED BY JUDGES FOIGHEL AND REPIK**

It is only with some hesitation that I have also voted in favour of finding no violation of Article 6 § 1 of the Convention with regard to the fairness of the proceedings.

I see no problem as far as the issue of equality of arms is concerned. The Cathedral Chapter did not substitute itself for the parish authorities, and moreover the applicant was given the opportunity to comment on the Cathedral Chapter's opinions. However, as regards the requirement that a court decision be reasoned, I have greater doubts, since on no occasion did the Supreme Administrative Court go explicitly into the arguments which the applicant had put forward against the positions adopted by the Parish Council and the Cathedral Chapter in his case. It is true that in upholding the Cathedral Chapter's decisions and appending those decisions to its own decisions the Supreme Administrative Court gave the applicant some clue as to what the reasons for its decisions were. However, in view of the fact that the reasoning of the Cathedral Chapter was rather categorical and brief, the Supreme Administrative Court should not have restricted itself, as it did twice, to holding that "the Court finds no reason to alter the decision"; the less so since it had not granted the applicant an oral hearing. The "national traditions and practices" referred to by the Delegate of the Commission do not in my opinion constitute sufficient justification for the imperfection of the reasoning. Given especially that there is some doubt about whether the Cathedral Chapter might be considered an independent and impartial tribunal in the sense of Article 6, in which case the Supreme Administrative Court was the first and only such tribunal to adjudicate on the applicant's claim with full competence to review the Cathedral Chapter's decisions, it was important that the former showed that a full review had indeed been carried out.

There are, however, certain "particular circumstances of the instant case" to which the judgment refers, which indicate that the Supreme Administrative Court "did not merely endorse without further ado the findings reached by a lower court". First of all, in both proceedings it requested an opinion of the Cathedral Chapter and offered the applicant the opportunity to comment on it. And, secondly, in its first decision the Supreme Administrative Court disagreed with the Cathedral Chapter's decision concerning the latter's lack of jurisdiction to examine the compensation claim. Both elements indicate that the Supreme

Administrative Court did not take the Cathedral Chapter's opinions for granted. All in all, these "particular circumstances" ultimately lead me to conclude that there are sufficient indications given by the Supreme Administrative Court that it accorded the applicant's case a full and independent examination, including on those points where its decisions merely incorporate the reasons given by the Cathedral Chapter.