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

GRAND CHAMBER

CASE OF VILHO ESKELINEN AND OTHERS v. FINLAND

(Application no. 63235/00)

JUDGMENT

STRASBOURG

19 April 2007

This judgment is final but may be subject to editorial revision.

In the case of Vilho Eskelinen and Others v. Finland,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Mr J.-P. COSTA, *President,*
Mr L. WILDHABER,
Mr C. ROZAKIS,
Sir Nicolas BRATZA,
Mr P. LORENZEN,
Mrs F. TULKENS,
Mr G. BONELLO,
Mr R. TÜRMEN,
Mr M. PELLONPÄÄ,
Mr K. TRAJA,
Mr M. UGREKHELIDZE,
Mr A. KOVLER,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO,
Ms L. MIJOVIĆ,
Mr E. MYJER,
Mrs D. JOČIENĖ, *judges*

and Mr E. FRIBERGH, *Registrar*,

Having deliberated in private on 20 September 2006 and on 21 February 2007,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 63235/00) 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 eight Finnish nationals ("the applicants"), Senior Constable Vilho Eskelinen, Senior Constable Arto Huttunen, Sergeant Markku Komulainen, Office Assistant Lea Ihatsu, Mr Toivo Pallonen (a police officer who retired on 1 January 1993) and Mrs Päivi Lappalainen, Mr Janne Lappalainen and Mr Jyrki Lappalainen, who are the heirs of Mr Hannu Matti Lappalainen (a police officer who died on 22 August 1995), ("the applicants") on 19 October 2000.

2. The applicants, two of whom had been granted legal aid, were represented by Mr Paavo M. Petäjä and by Mr Pasi Orava, both lawyers practising in Haapajärvi. The Finnish Government ("the Government") were

represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

3. The applicants alleged, in particular, that they were denied an oral hearing in the proceedings concerning their salaries and that the proceedings were excessive in length.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). On 29 November 2005 it was declared admissible by a Chamber of that Section, composed of Judges Bratza, Bonello, Pellonpää, Traja, Garlicki, Borrego Borrego and Mijović, together with the Section Registrar Mr M. O'Boyle. The Chamber joined to the merits the question of the applicability of Article 6 of the Convention. On 21 March 2006 the Chamber relinquished jurisdiction in favour of the Grand Chamber, neither of the parties having objected to relinquishment (Article 30 of the Convention and Rule 72).

5. The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24 of the Rules of Court. Mr L. Wildhaber, whose term of office expired after presiding over the hearing, continued to participate in the examination of the case (Article 23 § 7). Mr B.M. Zupančič, who was unable to attend the deliberations on 21 February 2007, was replaced by Mrs F. Tulkens, substitute judge (Rule 24 § 3).

6. The applicants and the Government each filed a memorial on the merits. The parties replied in writing to each other's observations.

7. A hearing took place in public in the Human Rights Building, Strasbourg, on 20 September 2006 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Mr A. KOSONEN of the Ministry for Foreign Affairs, *Agent*,
Mrs A. MANNER of the Ministry of Justice,
Mrs T. ERÄNKÖ, of the Ministry of the Interior, *Advisers*;

(b) *for the applicants*
Mr P. ORAVA, *Counsel*,

8. The Court heard addresses by Mr Kosonen and Mr Orava and their replies to questions put by judges.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicants were born in 1955, 1953, 1954, 1956, 1937, 1957, 1983 and 1981 respectively and live in Sonkakoski and Sonkajärvi.

A. The incorporation of the Sonkajärvi Police District

10. The first five applicants and the late Mr Hannu Matti Lappalainen worked in the Sonkajärvi Police District. Under a collective agreement concluded in 1986, they were entitled to a remote-area allowance, which was added to their salaries as a bonus for working in a remote part of the country. The amounts of the allowance were calculated on the basis of a given area's remoteness. By a collective agreement concluded on 15 March 1988, the remote-area allowance was abolished. This would have resulted in a reduction of the salary payable to civil servants whose duty station was Sonkajärvi. In order to prevent such a reduction, the collective agreement granted them monthly individual wage supplements from 1 March 1988.

11. On 1 November 1990 the Sonkajärvi Police District was incorporated into the Iisalmi Police District by a decision of the Ministry of the Interior (*sisäasiainministeriö, inrikesministeriet*). Following the incorporation, the applicants' duty station changed. They also lost their individual wage supplements and the length of their commute allegedly increased by up to 50 kilometres per day as they had to travel from Sonkajärvi to Iisalmi.

12. According to the applicants, following their request of 17 October 1990 to that effect, the Kuopio Provincial Police Command (*läänin poliisijohto, länspolisledningen*) promised that their loss would be compensated.

13. On 25 March 1991 the Police Department of the Ministry of the Interior, at the request of the Provincial Police Command, submitted a request for authorisation for the payment of monthly individual wage supplements, amounting to 500-700 Finnish marks (FIM) (84-118 euros (EUR)) per person, to those police officers and other personnel whose duty station had been changed from Sonkajärvi to Iisalmi. The request referred to an allegedly analogous case (the *Mäntyharju* case) in which the Ministry of Finance (*valtiovarainministeriö, finansministeriet*) had granted a request for individual wage supplements on 29 December 1989. On 3 July 1991 the Ministry of Finance replied that it could not grant such authorisation. It gave no reasons for its refusal.

14. On 1 October 1992 competence to decide on wage supplements in respect of local police forces was transferred to the County Administrative Boards (*lääninhallitus, länsstyrelsen*).

B. The proceedings before the Kuopio County Administrative Board

15. On 19 March 1993 the applicants lodged an application requesting that they be compensated for their loss. They referred to the above decision in the *Mäntyharju* case. They also relied on the principle of equality as laid down in Article 5 of the Constitution then in force (*Suomen hallitusmuoto, Regeringsform för Finland*; Act no. 94/1919).

16. Four years later, on 19 March 1997, the request was rejected by the Kuopio County Administrative Board. It reasoned:

> "The civil servants of the former Sonkajärvi Police District ... have ... requested compensation for the losses arising from the incorporation of police districts, in response to which the Provincial Police Command, endorsing the request, submitted documents to the Police Department of the Ministry of the Interior. By a letter of 25 March 1991 the Ministry of the Interior recommended to the Ministry of Finance the retroactive payment from 1 November 1990 of individual wage supplements to those civil servants whose duty station, after the incorporation, is Iisalmi.
>
> By a letter of 3 July 1991 [the Ministry of Finance] informed the Ministry of the Interior that it had found that it could not grant the request.
>
> Following the [Ministry of Finance's] decision, competence to decide on individual wage supplements was transferred to the County Administrative Boards. On 28 January 1993, in a negotiation meeting held by the Provincial Police Command at which the applicants were represented by Mr Lappalainen, it was noted that negotiations were pending with regard to the Askola Police District in the Uusimaa County, which was a corresponding case. As [the Ministry of Finance], which had the relevant competence, had already decided the claims concerning the Sonkajärvi Police District, it was concluded that, on grounds of fairness, the decision in Uusimaa would be adhered to in the Kuopio County were it to depart from the view of the Ministry of Finance. The Uusimaa County Administrative Board rejected the application and the decision was upheld by the Supreme Administrative Court. No new grounds have been presented in the letter of 19 March 1993, or in Mr Pallonen's [further and] separate claim of 17 August 1994, to support the claims which have already been decided [by the Ministry of Finance].
>
> The County Administrative Board has not learned of any positive decisions regarding compensation in corresponding cases as regards the incorporation of police districts anywhere in the country following the afore-mentioned [Ministry of Finance's] decision.
>
> In 1990, when the incorporation took place, the Provincial Police Command lacked competence to make any binding promises as regards the compensation of costs. Its view had been shown through its support of the application.

> The County Administrative Board, using its discretion and basing itself on the earlier decision by the competent authority, considers that the decision has acquired a certain *res judicata* effect. Emphasizing the principles of equality and fairness, the County Administrative Board also bases itself on the prevalent practice throughout the country."

17. Meanwhile, in December 1996 one of the applicants lodged a complaint with the Chancellor of Justice (*oikeuskansleri, justitiekanslern*) who, in his decision of 24 January 1997, drew attention to the fact that the applicants had still not received any answer to their application.

C. The proceedings before the Kuopio County Administrative Court

18. On 25 April 1997 the applicants appealed against the County Administrative Board's decision and requested an oral hearing which, they asserted, would make it possible to establish the facts of the case, in particular that a promise had been made by the Provincial Police Command. The Kuopio County Administrative Court (*lääninoikeus, länsrätten*) received replies to the appeal from the Provincial Police Command and the Provincial State Attorney (*lääninasiamies, länsombudet*), and these were communicated to the applicants for comment.

19. In its decision of 8 June 1998, the County Administrative Court reasoned:

> "Rectification of wage increases affecting pensions falls outside the County Administrative Court's competence.
>
> It is not necessary to receive oral testimony from the parties as regards the Provincial Police Command of the County Administrative Board's promises concerning the incorporation of police districts, or on how the case has been otherwise handled, in order to clarify the case.
>
> In its letter of 25 March 1991, the Ministry of the Interior proposed to the Ministry of Finance that the Sonkajärvi Police District be incorporated into the Iisalmi Police District from 1 November 1990 [*rightly: the Ministry of the Interior recommended payment, not incorporation*] and that the inconvenience caused by the change of duty station be compensated in the form of a wage supplement of FIM 500-700 per month, retroactively from 1 November 1990. In its letter of 3 July 1991 the Ministry of Finance considered that it could not grant the request. Negotiations were held between the Police Department of the Ministry of the Interior and the Police Association (in Finnish *Suomen Poliisiliitto ry*) on 3 September 1992 and between the Provincial Police Command of the Kuopio County Administrative Board and the applicants' representative on 28 January 1993.
>
> Pursuant to section 9(2) of the State Collective Agreement Decree (as amended on 18 September 1992) the County Administrative Board has competence to decide on wage supplements in respect of ... civil servants in the local police forces.
>
> The County Administrative Board must be considered to have examined the applicants' ... submission dated 19 March 1993 as a rectification request, referred to in

section 84 of the State Civil Servants Act. The rectification request has been lodged within the time laid down by section 95(1) of the State Civil Servants Act, if calculated from the Ministry of Finance's decision of 3 July 1991.

In 1990 the Provincial Police Command of the County Administrative Board lacked competence to give any binding promises pertaining to compensation. Competence to decide the matter lay at that time with the Ministry of Finance, which in its letter of 3 July 1991 had stated that it considered that it could not accede to the request. Since 1 October 1992 the Country Administrative Board has had competence to decide on the wages of local police.

The County Administrative Board has in its decision, subject to appeal, based itself on the decision by the former competent authority and on the fact that after 3 July 1991 no compensation had been awarded to personnel in other cases in which incorporation had taken place. The decision is therefore based on the prevalent practice at that time in the entire country. The decision cannot be considered unreasonable in those circumstances. It has been possible to dismiss the request for rectification."

D. The proceedings before the Supreme Administrative Court

20. On 7 July 1998 the applicants appealed further, requesting an oral hearing and emphasising that similar wage supplements had been granted to personnel from other police districts in corresponding situations. They relied, for example, on a decision of 10 January 1997 by the Pohjois-Karjala County Administrative Board, granting a police officer an individual wage supplement from 1 December 1996 following incorporation of the Valtimo Police District into the Nurmes Police District.

21. On 27 April 2000 the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*), having received observations from the Provincial Police Command and the Provincial State Attorney and having communicated them to the applicants for comment, upheld the lower court's decision. It reasoned:

"The Supreme Administrative Court has examined the case.

The promises made by the Provincial Police Command of the Kuopio County Administrative Board as regards compensation for costs arising from the incorporation of police districts have no legal relevance to the case. Thus, the holding of an oral hearing is manifestly unnecessary. Accordingly, the Supreme Administrative Court, having regard to section 38(1) of the Administrative Judicial Procedure Act, refuses [the appellants'] request for an oral hearing.

In their letter of 19 March 1993 [the appellants] requested compensation in the form of individual wage supplements of costs arising from the incorporation of their police district. On 1 October 1992 competence to decide on wages in respect of local police forces was transferred to the County Administrative Board pursuant to section 9(2) of the State Collective Agreement Decree (as amended on 18 September 1992).

> [The appellants] have no statutory right to the individual wage supplement in question. The Kuopio County Administrative Board has not overstepped its margin of appreciation. The County Administrative Board's decision is not in breach of the law. Therefore, the Supreme Administrative Court, having regard to section 7(1) of the Administrative Judicial Procedure Act, finds that there is no reason to amend the outcome of the County Administrative Board's decision, which accordingly remains final."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Individual wage supplements

22. The implementing instruction of 26 April 1988 on the application of the collective agreement with regard to the payment of a cold-area allowance to civil servants provided:

> "A civil servant working (before 29 February 1988) in a municipality not covered by the new collective agreement is entitled to an individual wage supplement ... as long as he or she is working in the municipality giving rise to an entitlement to such an allowance. Where a civil servant entitled to an individual wage supplement is ordered, temporarily or as a substitute, to perform the duties of another civil servant, or where his or her duty station is transferred to a municipality in which the previous remote-area allowance has not been paid, the said civil servant will not be paid the individual wage supplement during the period he or she is performing those other duties because, in order to receive the wage supplement, the civil servant has to perform his or her duties in a municipality giving rise to entitlement to the wage supplement."

According to the applicants, this instruction was not relevant to the present case, in that it allegedly concerned only temporary transfers, whereas the transfer of the applicants' place of duty had been of a permanent nature.

23. In its request of 25 March 1991 the Police Department of the Ministry of the Interior referred to an allegedly analogous case in which the Ministry of Finance had on 29 December 1989 granted a request for individual wage supplements following the incorporation of the Pertunmaa Police District into that of the Mäntyharju Police District (the *Mäntyharju* case).

24. On 3 July 1991 the Ministry of Finance refused a request for compensation for commute costs lodged by a civil servant, whose duty station had changed following the incorporation of the Askola Police District into that of the Mäntsälä and Porvoo Police District. The decision was upheld by the Uusimaa County Administrative Board and the Supreme Administrative Court on 7 April 1993 and 7 December 1994 respectively.

25. By a decision of 10 January 1997 the Pohjois-Karjala County Administrative Board granted a police officer a cold-area allowance at

level 1 plus an individual wage supplement compensating for the difference between level 2 (Valtimo) and level 1 (Nurmes) of the cold area allowance following the incorporation of the Valtimo Police District into the Nurmes Police District (the *Nurmes* case).

B. Oral hearings

26. Section 38 (1) of the Administrative Judicial Procedure Act (*hallintolainkäyttölaki, förvaltningsprocesslagen*; Act no. 586/1996) provides that an oral hearing must be held if requested by a private party. An oral hearing may however be dispensed with if a party's request is ruled inadmissible or immediately dismissed or if an oral hearing would be clearly unnecessary due to the nature of the case or other circumstances.

27. The explanatory report on the Government Bill (no. 217/1995) for the enactment of the Administrative Judicial Procedure Act examines the right to an oral hearing as provided by Article 6 of the Convention and the possibility in administrative matters to dispense with the hearing when it would be clearly unnecessary, as stated in section 38(1) of the said Act. It notes that an oral hearing contributes to a focussed and immediate procedure but since it does not always bring any added value, it must be ensured that the flexibility and cost-effectiveness of the administrative procedure is not undermined. An oral hearing is to be held when it is necessary for the clarification of the issues and the hearing can be considered beneficial for the case as whole.

III. RELEVANT INTERNATIONAL LAW AND PRACTICE

28. The international law and practice from which the Court sought guidance in the case of *Pellegrin v. France* ([GC], no. 28541/95, ECHR 1999-VIII) has been outlined in that judgment (see §§ 37-41).

29. Article 47 of the Charter of Fundamental Rights of the European Union, proclaimed on 7 December 2000, on the right to an effective remedy and a fair trial, provides:

> "Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.
>
> Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.
>
> Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice."

30. The Explanations Relating to the Charter of Fundamental Rights, originally prepared under the authority of the Praesidium of the Convention which drafted the Charter and finally integrated in the Final Act of the Treaty establishing a Constitution for Europe, do not have equal authority as the Charter. However, they are a "valuable tool of interpretation intended to clarify the provisions of the Charter":

> Extract:
>
> "The second paragraph [of Article 47] corresponds to Article 6(1) of the ECHR which reads as follows:
>
> 'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.'
>
> In Union law, the right to a fair hearing is not confined to disputes relating to civil law rights and obligations. That is one of the consequences of the fact that the Union is a community based on the rule of law as stated by the Court in Case 294/83, '*Les Verts' v European Parliament* (judgment of 23 April 1986, [1988] ECR 1339). Nevertheless, in all respects other than their scope, the guarantees afforded by the ECHR apply in a similar way to the Union."

It follows that Article 47, in the context of European Union law, is not confined to civil rights and obligations or to criminal matters within the meaning of Article 6 of the Convention. In this respect the Charter codified existing case-law of the Court of Justice of the European Communities (see the case of *Marguerite Johnston v. Chief Constable of the Royal Ulster Constabulary,* Case 222/84, [1986] ECR 1651, referred to in § 60 below).

THE LAW

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

31. The applicants complained under Article 6 § 1 of the Convention about the excessive length of the proceedings concerning the terms of their employment as civil servants and about the lack of an oral hearing before any of the domestic instances.

The relevant provision reads:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by [a] ... tribunal ..."

A. The parties' submissions

1. The applicants

32. The applicants contested the Government's contention that Article 6 did not apply to some of them in their capacity as police officers. They emphasised that their service and their salaries were not related to the exercise of powers conferred by public law. What was at stake was their right to their salaries. That right was of a private-law character. The amount of their salaries was a contractual matter regulated by the collective agreement between the employee and the employer. The applicants emphasised that they had not complained about the fact that their offices were ordered to move from one location to another. Neither did the case concern the use of public authority, hiring, career or termination of employment. The dispute also had relevance to the amount of their pensions.

33. The applicants considered that the proceedings had begun on 17 October 1990 when they had lodged their initial application. On 3 July 1991 the Ministry of Finance had rendered its decision. On 19 March 1993 after nearly two years of futile negotiations with the State, the applicants had petitioned the County Administrative Board. The procedures in the Ministry of the Interior and the County Administrative Board were relevant because they had been a necessary prerequisite for obtaining a decision in the case. The applicants could not have seized the County Administrative Court without having obtained the Board's decision first. The proceedings ended on 27 April 2000. They rejected the Government's contention that it had been imperative to await the outcome of the *Askola* case, arguing that that case had not been comparable to theirs. In any event, the resolution of that case had become final on 7 December 1994. The applicants had acted speedily. The case had concerned their basic livelihood.

34. Lastly, the applicants maintained that a hearing should have been held with a view to taking oral testimony from them about the particular facts of the case. The administration had promised them compensation. In fact, section 38 (1) of the Administrative Judicial Procedure Act required that a hearing be held since a hearing was not manifestly unnecessary.

2. The Government

35. The Government contested the applicability of Article 6 on the ground that the applicants' duties, except for those of the office assistant,

entailed direct participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State (in this connection, they referred to *Pellegrin v. France*, cited above, § 66). Whether the duties of the office assistant applicant included indirect participation was less obvious. However, the Government referred to the Court's reasoning in *Verešová v. Slovakia* ((dec.), no. 70497/01, 1 February 2005) in which it found that Article 6 was inapplicable to a lawyer serving in the police and held that "having regard to the nature of the functions and responsibilities which [the police] incorporates, the applicant's employment can be regarded as a direct participation in [the] exercise of the public authority and functions aiming at safeguarding the general interests of the State". The rights and obligations of police officers had a distinctly "public" rather than a "civil" aspect for the purposes of Article 6. The alleged fact that the applicants' pecuniary interests were at stake did not suffice to bring the proceedings within the ambit of Article 6 since "proceedings do not become civil merely because they raise an economic issue" (see *Pierre-Bloch v. France*, judgment of 21 October 1997, *Reports of Judgments and Decisions* 1997-VI, p. 2223, § 51). Accordingly, the complaints were incompatible *ratione materiae* with the Convention.

36. The Government also contested applicability on the ground that there was no statutory right to the wage supplement in question. The applicants had no right or entitlement to the wage supplement based on the collective agreement and the implementing instruction concerning the payment of wage supplements instead of the earlier remote-area allowance. Thus, the complaints of all the applicants were incompatible *ratione materiae* with the Convention in this regard.

37. Were the Court to hold otherwise, the Government submitted that in any event there had been no breach of Article 6 § 1 of the Convention. In their view the proceedings had begun on 25 April 1997 when the applicants had lodged their application with the County Administrative Court and had ended on 27 April 2000 with the Supreme Administrative Court's decision. The case had not been complex; the County Administrative Board had stayed the proceedings partly because it had wished to wait for the outcome of the *Askola* case with a view to treating personnel from different police districts in an equal manner, although the matter had already been decided in respect of the applicants. The fact that it had taken the County Administrative Board four years to examine the applicants' request could not be taken into account, as that procedure had not amounted to court proceedings and was thus not relevant in calculating the length of the proceedings. The case had not involved basic subsistence and had not therefore, or on any other ground, been particularly urgent. There had been efforts to resolve the case by way of negotiation between 3 July 1991 and 19 March 1993. During the negotiations the applicants had been informed that a wage supplement could only be granted if the Supreme

Administrative Court amended the decision of the lower court in the *Askola* case.

38. As to the lack of a hearing, the Government pointed out that the County Administrative Court had found that the facts which the applicants wished to present in an oral hearing had no relevance for the outcome of the case and that the Supreme Administrative Court had found that the promises made by the Provincial Police Command had no legal relevance, both courts finding an oral hearing unnecessary. The applicants had been given an opportunity to provide additional written observations. The issue at stake had been technical and based on the relevant documents. There had been no questions of fact or law that could not have been adequately resolved on the basis of the case file and the parties' written submissions. No additional information could have been gathered by hearing any of the applicants in person.

B. The Court's assessment

1. Applicability of Article 6

39. The Government have contested the applicability of Article 6 on two grounds, namely whether there was a "right" and whether it was "civil" in nature.

(a) Existence of a right

40. First, the Court will examine whether there existed a "right" in the present case. According to the principles enunciated in its case-law (see, *inter alia*, *Pudas v. Sweden*, judgment of 27 October 1987, Series A no. 125-A, p. 14, § 31), the dispute over a "right", which can be said at least on arguable grounds to be recognised under domestic law, must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, finally, the result of the proceedings must be directly decisive for the right in question.

41. The Court notes that it has not been disputed that the Provincial Police Command had promised the applicants compensation. The case file also discloses that individual wage supplements were granted in situations which were not entirely dissimilar from that of the applicants. Nor did the national courts dismiss the applicants' claims as lacking any basis. While it is true that their claims were rejected, the Administrative Courts may be regarded as having examined the merits of the application and in so doing they determined the dispute over their rights. The Court considers that against such a background the applicants could claim to have a right on arguable grounds (see, *inter alia*, *Neves e Silva v. Portugal*, judgment of 27 April 1989, Series A no. 153-A, p. 14, § 37).

(b) Civil nature of the right

42. Secondly, the Court has examined the Government's argument, relying on *Pellegrin* (cited above), that Article 6 is not applicable since disputes raised by servants of the State such as police officers over their conditions of service are excluded from its ambit. The present case concerns proceedings in which it was determined whether the first five applicants, and the late Mr Hannu Matti Lappalainen, who were civil servants, were entitled to receive a wage supplement. In order to determine this question the Court must recall the background to and the *ratio* of the *Pellegrin* judgment and how this has been applied in practice in subsequent cases.

1. Summary of the case-law

43. Before the *Pellegrin* judgment the Court had held that disputes relating to the recruitment, careers and termination of service of civil servants were as a general rule outside the scope of Article 6 § 1. That general principle of exclusion had however been limited and clarified in a number of judgments. For example, in the cases of *Francesco Lombardo v. Italy* (judgment of 26 November 1992, Series A no. 249-B, p. 26-27, § 17) and *Massa v. Italy* (judgment of 24 August 1993, Series A no. 265-B, p. 20, § 26) the Court had considered that the applicants' complaints related neither to the "recruitment" nor to the "careers" of civil servants and only indirectly to "termination of service" as they consisted in claims for purely pecuniary rights arising in law after termination of service. In those circumstances and in view of the fact that the Italian State was not using "discretionary powers" in performing its obligation to pay the pensions in issue and could be compared to an employer who was a party to a contract of employment governed by private law, the Court had held that the applicants' claims were "civil" in nature within the meaning of Article 6 § 1.

44. On the other hand, in the case of *Neigel v. France* (judgment of 17 March 1997, *Reports* 1997-II, p. 411, § 44) the decision contested by the applicant, namely the refusal to reinstate her to a permanent post in the civil service, had been held by the Court to concern "her 'recruitment', her 'career' and the 'termination of [her] service'". Nor did the applicant's claim for payment of the salary she would have received if she had been reinstated render Article 6 § 1 applicable as an award of such compensation by the administrative court was "directly dependent on a prior finding that the refusal to reinstate [had been] unlawful". The Court had accordingly decided that the dispute did not concern a "civil" right within the meaning of Article 6 § 1.

45. According to other judgments, Article 6 § 1 had applied where the claim in issue related to a "purely economic" right – such as payment of salary (see the *De Santa v. Italy*, *Lapalorcia v. Italy* and *Abenavoli v. Italy* judgments of 2 September 1997, *Reports* 1997-V, p. 1663, § 18; p. 1677, § 21; and p. 1690, § 16 respectively) – or an "essentially economic" one

(see the *Nicodemo v. Italy*, judgment of 2 September 1997, *Reports* 1997-V, p. 1703, § 18) and did not mainly call in question "the authorities' discretionary powers" (see *Benkessiouer v. France* and *Couez v. France*, judgments of 24 August 1998, *Reports* 1998-V, pp. 2287-88, §§ 29-30; and p. 2265, § 25 respectively; *Le Calvez v. France*, judgment of 29 July 1998, *Reports* 1998-V, pp. 1900-01, § 58; and *Cazenave de la Roche v. France*, judgment of 9 June 1998, *Reports* 1998-III, p. 1327, § 43).

46. When the Court came to review the situation in the case of *Pellegrin* (§ 60) it considered that the above case-law contained a degree of uncertainty for Contracting States as to the scope of their obligations under Article 6 § 1 in disputes raised by employees in the public sector over their conditions of service. The Court sought to put an end to that uncertainty by establishing an autonomous interpretation of the term "civil service" which would make it possible to afford equal treatment to public servants performing equivalent or similar duties in the States Parties to the Convention, irrespective of the domestic system of employment and, in particular, whatever the nature of the legal relation between the official and the administrative authority.

47. To that end the Court introduced a functional criterion based on the nature of the employee's duties and responsibilities. The holders of posts involving responsibilities in the general interest or participation in the exercise of powers conferred by public law wielded a portion of the State's sovereign power. The State therefore had a legitimate interest in requiring of these officials a special bond of trust and loyalty. On the other hand, in respect of other posts which did not have this "public administration" aspect, there was no such interest (see the judgment cited above, § 65). The Court therefore ruled that the only disputes excluded from the scope of Article 6 § 1 were those which were raised by public servants whose duties typified the specific activities of the public service in so far as the latter was acting as the depositary of public authority responsible for protecting the general interests of the State or other public authorities. A manifest example of such activities was provided by the armed forces and the police (see § 66). It concluded that no disputes between administrative authorities and employees who occupied posts involving participation in the exercise of powers conferred by public law attracted the application of Article 6 § 1 (§ 67).

48. The Court observes that *Pellegrin* was categorical in its wording; where the post belonged to the said category, all disputes were excluded from Article 6 irrespective of their nature. It allowed only one exception: disputes concerning pensions all came within the ambit of Article 6 § 1 because, on retirement, the special bond between the employees and the authorities was broken; the employees then found themselves in a situation exactly comparable to that of employees under private law in that the special relationship of trust and loyalty binding them to the State had ceased

to exist and the employee could no longer wield a portion of the State's sovereign power (see the judgment cited above, § 67).

49. It is important to note that the Court emphasised that in applying a functional criterion it must adopt a restrictive interpretation, in accordance with the object and purpose of the Convention, of the exceptions to the safeguards afforded by Article 6 §1 (§§ 64-67). This was to limit the cases in which public servants could be denied the practical and effective protection afforded to them (as confirmed in *Frydlender v. France* [GC], no. 30979/96, § 40, ECHR 2000-VII).

2. Whether there is a need for a development of the case-law

50. The *Pellegrin* judgment, which is the most recent significant link in the chain of development of the case-law, was intended to provide a workable concept by which it was to be ascertained, on a case-by-case basis, whether the applicant's post entailed – in the light of the nature of the duties and responsibilities appertaining to it – direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities. It then had to be determined whether the applicant, in the framework of one of these categories of posts, did indeed exercise functions which could be characterised as falling within the exercise of public power, that is, whether the applicant's position within the State hierarchy was sufficiently important or elevated to speak of a participation in wielding State power.

51. The present case, however, highlights that the application of the functional criterion may itself lead to anomalous results. At the material time the applicants were employed by the Ministry of the Interior. Five of them were employed as police officers, which typifies the specific activities of the public service as defined above. This entailed participating directly in the exercise of powers conferred by public law and the performance of duties designed to safeguard the general interests of the State. The functions of the office assistant applicant were purely administrative, without any decision-making competence or other exercise directly or indirectly of public power. Her functions were thus not distinguishable from any other office assistant in public or private employment. As noted above, *Pellegrin* expressly mentioned the police as a manifest example of activities belonging to the exercise of public authority, thus excluding a whole category of persons from the scope of Article 6. On a strict application of the *Pellegrin* approach it would appear that the office assistant applicant in the present case would enjoy the guarantees of Article 6 § 1, whereas there is no doubt that the police officer applicants would not. This would be so irrespective of the fact that the dispute was identical for all the applicants.

52. Further, an examination of the cases decided since *Pellegrin* shows that ascertaining the nature and status of the applicant's functions has not been an easy task; nor has the category of public service in which the

applicant works always been clearly distinguishable on the basis of his or her actual role. In some cases it has not been apparent the extent to which inclusion in a particular sector of public service was sufficient to remove the applicability of Article 6 without consideration of the nature of the individual's responsibilities.

For example, in *Kępka v. Poland* ((dec.), nos. 31439/96 and 35123/97, ECHR 2000-IX) the Court found that, although the applicant, unfit for fire-fighting duties, worked throughout his career in the national fire service as a lecturer, his duties, which involved research and access to information of a sensitive nature, had to be regarded as falling within the sphere of national defence, in which the State exercised sovereign power, and as having entailed, at least indirectly, participation in the performance of duties designed to safeguard the general interests of the State (see, *a contrario*, *Frydlender v. France*, cited above, § 39). Accordingly, Article 6 was inapplicable. By way of further example, in *Kanayev v. Russia*, (no. 43726/02, § 18, 27 July 2006), where the applicant was an active officer of the Russian navy, a third-rank captain, and thus in that capacity "wielded a portion of the State's sovereign power", Article 6 § 1 was held not to apply, even though the dispute related to non-enforcement of a court judgment in his favour which related to disputed travel expenses. In *Verešová v. Slovakia* (cited above), Article 6 § 1 was excluded in respect of a lawyer working for the police on the basis of the nature of the functions and responsibilities of the police service as a whole, without any apparent consideration of her own individual role in the organisation.

53. Furthermore, it is particularly striking that, taken literally, the "functional approach" requires that Article 6 be excluded from application to disputes where the position of the applicant as a State official does not differ from the position of any other litigant, or, in other words, where the dispute between the employee and the employer is not especially marked by a "special bond of trust and loyalty".

54. That it was the applicant's position and not the nature of the dispute which was decisive was, however, confirmed in the case of *Martinie v. France* ([GC], no. 58675/00, § 30, 12 April 2006) where the Grand Chamber concluded that Article 6 § 1 was applicable, as the Chamber had done (admissibility decision of 13 January 2004), but on the basis of different reasoning. It had regard to the fact that the applicant was a civil servant who worked as an accountant for a school, without any participation in the exercise of public powers, whereas the Chamber had mainly had regard to the nature of the dispute between the applicant and the State, namely his liability to repay unauthorised payments, in reaching the conclusion that the obligations of the applicant were "civil" ones within the meaning of Article 6 § 1, with private-law features predominating in this case.

55. The Court can only conclude that the functional criterion, as applied in practice, has not simplified the analysis of the applicability of Article 6 in proceedings to which a civil servant is a party or brought about a greater degree of certainty in this area as intended (see, *mutatis mutandis*, *Perez v. France* [GC], no. 47287/99, § 55, ECHR 2004-I.).

56. It is against this background and for these reasons that the Court finds that the functional criterion adopted in the case of *Pellegrin* must be further developed. While it is in the interests of legal certainty, foreseeability and equality before the law that the Court should not depart, without good reason, from precedents laid down in previous cases, a failure by the Court to maintain a dynamic and evolutive approach would risk rendering it a bar to reform or improvement (see, *mutatis mutandis*, *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 121, ECHR 2005-I.).

57. *Pellegrin* should be understood against the background of the Court's previous case-law and as constituting a first step away from the previous principle of inapplicability of Article 6 to the civil service, towards partial applicability. It reflected the basic premise that certain civil servants, because of their functions, are bound by a special bond of trust and loyalty towards their employer. However, it is evident from the cases decided since, that in very many Contracting States access to a court is accorded to civil servants, allowing them to bring claims for salary and allowances, even dismissal or recruitment, on a similar basis to employees in the private sector. The domestic system, in such circumstances, perceives no conflict between the vital interests of the State and the right of the individual to protection. Indeed, while neither the Convention nor its Protocols guarantee a right of recruitment to the civil service, it does not follow that in other respects civil servants fall outside the scope of the Convention (see, *mutatis mutandis*, *Abdulaziz, Cabales and Balkandali*, judgment of 28 May 1985, Series A no. 94, pp. 31-32, § 60; and *Glasenapp v. Germany*, judgment of 28 August 1986, Series A no. 104, p. 26, § 49).

58. Furthermore, Articles 1 and 14 of the Convention stipulate that "everyone within [the] jurisdiction" of the Contracting States must enjoy the rights and freedoms in Section I "without discrimination on any ground" (see, *mutatis mutandis*, *Engel and Others v. the Netherlands*, judgment of 8 June 1976, Series A no. 22, p. 23, § 54). As a general rule, the guarantees in the Convention extend to civil servants (see, *mutatis mutandis*, *Schmidt and Dahlström v. Sweden*, judgment of 6 February 1976, Series A no. 21, p. 15, § 33; *Engel and Others v. the Netherlands*, cited above, p. 23, § 54; *Glasenapp v. Germany*, cited above, p. 26, § 49; and *Ahmed and Others v. the United Kingdom*, judgment of 2 September 1998, *Reports* 1998-VI, p. 2378, § 56).

59. Adopting the restrictive interpretation of the functional criterion advocated in *Pellegrin* itself, there should therefore be convincing reasons

for excluding any category of applicant from the protection of Article 6 § 1. In the present case, where the applicants, police officers and administrative assistant alike, had, according to the national legislation, the right to have their claims for allowances examined by a tribunal, no ground related to the effective functioning of the State or any other public necessity has been advanced which might require the removal of Convention protection against unfair or lengthy proceedings.

60. Looking to European law generally, which provides useful guidance (see *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, §§ 43-45, 92 and 100, ECHR 2002-VI; *Posti and Rahko v. Finland*, no. 27824/95, § 54, ECHR 2002-VII; and *Meftah and Others v. France* [GC], nos. 32911/96, 35237/97 and 34595/97, § 45, ECHR 2002-VII), the Court notes that *Pellegrin* sought support in the categories of activities and posts listed by the European Commission and by the Court of Justice of the European Communities in connection with the exception to the freedom of movement (§ 66). However, the Court would observe that the Luxembourg Court itself applies a wider approach in favour of judicial control, as shown by its landmark judgment in the case of *Marguerite Johnston v. Chief Constable of the Royal Ulster Constabulary* (Case 222/84, [1986] ECR 1651, § 18) brought by a female police officer on the basis of the Directive on non-discrimination. The Luxembourg Court reasoned:

> "The requirement of judicial control stipulated [in Article 6 of Council Directive No. 76/207] reflects a general principle of law which underlies the constitutional traditions common to the Member States. That principle is also laid down in articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950. As the European Parliament, Council and Commission recognized in their joint declaration of 5 April 1977 ... and as the court has recognized in its decisions, the principles on which that Convention is based must be taken into consideration in Community law."

This and other case-law in areas having a connection with community law indicate that the scope of applicability of judicial control in EU law is wide. If an individual can rely on a material right guaranteed by community law, his or her status as a holder of public power does not render the requirements of judicial control inapplicable. Moreover, the broad scope of the effective judicial control has been emphasised by the Luxembourg Court's reference to both Articles 6 and 13 of the Convention (see the *Marguerite Johnston* case, cited above, and the case of *Panayotova and Others v Minister voor Vreemdelingenzaken en Integratie*, Case C-327/02, [2004], ECR I-00000, § 27), as well as by the Charter on Fundamental Rights (see above §§ 29-30).

61. The Court recognises the State's interest in controlling access to a court when it comes to certain categories of staff. However, it is primarily for the Contracting States, in particular the competent national legislature, not the Court, to identify expressly those areas of public service involving

the exercise of the discretionary powers intrinsic to State sovereignty where the interests of the individual must give way. The Court exerts its supervisory role subject to the principle of subsidiarity (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 103, ECHR 2001-V). If a domestic system bars access to a court, the Court will verify that the dispute is indeed such as to justify the application of the exception to the guarantees of Article 6. If it does not, then there is no issue and Article 6 § 1 will apply.

It should be emphasised, however, that this situation is distinct from other cases, which due to the claims being made are regarded as falling outside the civil and criminal heads of Article 6 § 1 of the Convention (see, *inter alia*, for the assessment of tax *Ferrazzini v. Italy* ([GC], no. 44759/98, ECHR 2001-VII); for matters of asylum, nationality and residence in a country, *Maaouia v. France* ([GC], no. 39652/98, ECHR 2000-X); and for the adjudication of election disputes in respect of members of Parliament, *Pierre-Bloch v. France*, cited above). The reasoning in this case is therefore limited to the situation of civil servants.

62. To recapitulate, in order for the respondent State to be able to rely before the Court on the applicant's status as a civil servant in excluding the protection embodied in Article 6, two conditions must be fulfilled. Firstly, the State in its national law must have expressly excluded access to a court for the post or category of staff in question. Secondly, the exclusion must be justified on objective grounds in the State's interest. The mere fact that the applicant is in a sector or department which participates in the exercise of power conferred by public law is not in itself decisive. In order for the exclusion to be justified, it is not enough for the State to establish that the civil servant in question participates in the exercise of public power or that there exists, to use the words of the Court in the *Pellegrin* judgment, a "special bond of trust and loyalty" between the civil servant and the State, as employer. It is also for the State to show that the subject matter of the dispute in issue is related to the exercise of State power or that it has called into question the special bond. Thus, there can in principle be no justification for the exclusion from the guarantees of Article 6 of ordinary labour disputes, such as those relating to salaries, allowances or similar entitlements, on the basis of the special nature of relationship between the particular civil servant and the State in question. There will, in effect, be a presumption that Article 6 applies. It will be for the respondent Government to demonstrate, first, that a civil-servant applicant does not have a right of access to a court under national law and, second, that the exclusion of the rights under Article 6 for the civil servant is justified.

63. In the present case it is common ground that the applicants all had access to a court under national law. Accordingly, Article 6 § 1 is applicable.

64. The Court would note that its conclusion concerning the applicability of Article 6 is without prejudice to the question of how the

various guarantees of that Article (for example, the scope of review required of the national courts; see *Zumtobel v. Austria*, judgment of 21 September 1993, Series A no. 268-A, p. 14, § 32) should be applied in disputes concerning civil servants. In the present case, the Court needs to consider only two such guarantees, namely those relating to the length of the proceedings and to oral hearings.

2. Compliance with Article 6

(a) Length of the proceedings

65. The Court reiterates that in civil matters the reasonable time may begin to run, in some circumstances, even before the issue of the writ commencing proceedings before the court to which the plaintiff submits the dispute (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, p. 15, § 32). This is the situation in the applicants' case, since they could not seize the County Administrative Court before receiving, on their rectification request (see paragraph 19), a decision which could be appealed against (see, *mutatis mutandis*, *König v. Germany*, judgment of 28 June 1978, Series A no. 27, p. 33, § 98, *Janssen v. Germany*, no. 23959/94, § 40, 20 December 2001, and *Hellborg v. Sweden*, no. 47473/99, § 59, 28 February 2006).

66. Consequently, in the present case, the reasonable time stipulated by Article 6 § 1 started to run on the day the applicants lodged their application with the County Administrative Board, which they did on 19 March 1993 (see the preceding paragraph). It is undisputed that the proceedings ended with the Supreme Administrative Court's decision of 27 April 2000. Thus, they lasted over seven years.

67. The Court will assess the reasonableness of the length of the proceedings in the light of the particular circumstances of the case and having regard to the criteria laid down in its case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. On the latter point, what was at stake for the applicant has also to be taken into account (see *Philis v. Greece (no. 2)*, judgment of 27 June 1997, *Reports* 1997-IV, p. 1083, § 35).

68. The Court agrees with the parties that the case was not a complex one. The issue at stake was unexceptional.

69. As to the conduct of the applicants, they did not prolong the proceedings. As concerns the conduct of the authorities, the Court observes that the County Administrative Board received the petition on 19 March 1993. It received the responses to the application and subsequently communicated them to the applicants for comments, rendering its decision on 19 March 1997. It thus took it four years to examine the case. This lapse of time is explained neither by the procedural steps taken nor by

any perceived need to await the outcome of the *Askola* case which had already become final on 7 December 1994.

70. As to the proceedings before the County Administrative Court and the Supreme Administrative Court the Court finds that these two instances took some three years in total. It considers that these proceedings do not give rise to any issues as such.

71. In sum, the Court concludes that there were delays in the proceedings before the County Administrative Board for which it has found no sufficient explanation. There has therefore been a violation of Article 6 § 1 of the Convention on account of the length of the proceedings.

(b) Oral hearing

72. The applicable principles are outlined in the Court's judgment in the case of *Jussila v. Finland* ([GC], no. 73053/01, §§ 40-45).

73. In the present case, the applicants' purpose in requesting a hearing was to demonstrate that the police administration had promised them that their economic loss would be compensated. The administrative courts found in the circumstances that an oral hearing was manifestly unnecessary as the alleged promise lacked relevance. The Court finds force in the Government's argument that any issues of fact and law could be adequately addressed in, and decided on the basis of, written submissions.

74. The Court further observes that the applicants were not denied the possibility of requesting an oral hearing, although it was for the courts to decide whether a hearing was necessary (see, *mutatis mutandis*, *Martinie v. France*, cited above, § 44). The administrative courts gave such consideration with reasons. Since the applicants were given ample opportunity to put forward their case in writing and to comment on the submissions of the other party, the Court finds that the requirements of fairness were complied with and did not necessitate an oral hearing.

75. There has, accordingly, been no violation of Article 6 § 1 of the Convention on account of the lack of an oral hearing.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

76. The applicants claimed to be victims of a breach of Article 13 of the Convention, which reads:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

1. The applicants

77. The applicants maintained that the lengthy proceedings had made their appeals ineffective. The avenue of appeal had thus not been an effective one.

2. The Government

78. The Government considered that as there had been no violation of Article 6, there existed no arguable claim under Article 13. Should the Court take another view, they submitted that the complaint was unfounded as the applicants had appealed against the County Administrative Board's decision at two court levels. As to the length of the proceedings, the applicants had had an effective remedy, as proved by the fact that one of the applicants lodged a successful complaint with the Chancellor of Justice, who drew the Board's attention to tardiness in the proceedings. The Government also relied on the principle that although no single remedy might itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law might do so (see, for example, *X v. the United Kingdom*, judgment of 5 November 1981, Series A no. 46, p. 26, § 60; *Van Droogenbroeck v. Belgium*, judgment of 24 June 1982, Series A no. 50, p. 32, § 56; and *Leander v. Sweden*, judgment of 26 March 1987, Series A no. 116, §§ 77 and 81-82). In addition, the "authority" referred to in Article 13 did not necessarily have to be a judicial authority.

B. The Court's assessment

79. The Court has interpreted the applicants' complaint under Article 13 to mean that they claim that they had no way of speeding up the domestic proceedings. Since the Convention right asserted by the applicants is the right to a "hearing within a reasonable time" guaranteed by Article 6 § 1, the Court must determine the scope of the respondent State's obligation under Article 13 to provide the applicants with "an effective remedy before a national authority".

80. As the Court has held on many occasions, Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint;

however, the remedy required by Article 13 must be "effective" both in law and in practice (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

81. It remains for the Court to determine whether the means available to the applicants in Finnish law for raising a complaint about the length of proceedings in their case would have been "effective" in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that had already occurred.

82. There was no specific legal avenue whereby the applicants could complain of the length of the proceedings with a view to expediting the determination of their dispute. The Court takes note of the Government's argument that the complaint to the Chancellor of Justice speeded up the proceedings. Indeed, it appears that the Chancellor's decision of 24 January 1997 may have had an impact on the County Administrative Board, which rendered its decision in March 1997. However, by the time the Chancellor of Justice took measures, the applicants had been awaiting a decision for nearly four years. The Court finds that although the Chancellor's intervention and its positive effect in the present case must be acknowledged, a complaint to the Chancellor's Office does not meet the standard of "effectiveness" for the purposes of Article 13. The Government have previously admitted that mere delay was not as such a ground for compensation under Finnish law (see *Kangasluoma v. Finland*, no. 48339/99, § 43, 20 January 2004).

83. The Court thus finds that there has been a violation of Article 13 of the Convention in that the applicants had no domestic remedy whereby they could enforce their right to a hearing within a reasonable time as guaranteed by Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1, IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION

84. The applicants alleged a breach of Article 1 of Protocol No. 1 to the Convention, which reads:

> "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."

They also alleged a breach of Article 14 of the Convention, which reads:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. The parties' submissions

1. The applicants

85. The applicants asserted that they had initially been entitled to a remote-area allowance, which had subsequently been abolished. As a result, the amount of money to which civil servants working in Sonkajärvi had been entitled had been reduced. In order to compensate for this drop in income, they had been granted individual wage supplements, forming a fixed part of their salaries and expressly compensating for the decrease in salary. This had been in accordance with the State Administration's practice to the effect that acquired advantages should not be lost, which was demonstrated by subsequent directions (introduced in 2003) for the application of the pay system. This change had taken place prior to the incorporation of the districts, which had then resulted in a loss of part of their salaries (i.e. the wage supplement). The applicants had an acquired right in money, which the State took from them by a unilateral decision.

86. The applicants further submitted that the *Nurmes* case had been identical to theirs. In that case a police officer had been compensated for the reduction in his salary following incorporation into the Nurmes Police District (decision of the Pohjois-Karjala County Administrative Board) and as a result, the salary of the police officer in question had been maintained at its previous level. The applicants' salaries had not. The *Askola* case had not been comparable to theirs, because police officers in Askola had never received a remote-area allowance, a cold-area allowance or individual wage supplements. The applicants also referred to the *Mäntyharju* case, in which the civil servants' commuting costs had been compensated in the form of individual wage supplements following a change in duty station from Pertunmaa to Mäntyharju. The applicants had received no such compensation.

87. The applicants rejected as irrelevant the implementing instruction referred to by the Government below, as they were permanent civil servants in permanent posts, whereas the instruction applied only to a civil servant who was ordered temporarily or as a substitute to perform duties that differed from his or her regular duties.

88. The applicants argued that it was evident from a Supreme Administrative Court's decision (issued on 30 June 1994), which concerned

Senior Constable P.P.E. and his pension, that it was justified to compensate loss flowing from the incorporation in question.

2. The Government

89. The Government submitted that, as there was no "right" within the meaning of Article 6, there was equally no possession within the meaning of Article 1 of Protocol No. 1. Consequently, neither Article 1 of Protocol No. 1 nor Article 14 had any application to the case. Were the Court to hold otherwise, the Government submitted the following.

90. As to the allegation that the applicants had been treated differently from other personnel, the Government explained that, pursuant to a collective agreement, civil servants working in Sonkajärvi had been entitled to a remote-area allowance. By a subsequent collective agreement, in force until 29 February 1992, the remote-area allowance had been replaced by a cold-area allowance and certain municipalities, including Sonkajärvi, had been removed from the group for which this allowance was to be paid. The loss of the wage supplement was based on a provision in the implementing instruction for the collective agreement, according to which it was paid only as long as the person concerned served in the municipality where the entitlement to the supplement was given. If the duty station changed, temporarily or permanently, the payment of the supplement ceased. As to the *Nurmes* case, in which a wage supplement had been granted because of a reduction in the cold-area allowance grading, it was not comparable to the applicants' case. A clearly negative position concerning compensation for the longer commute was taken by the Ministry of Finance in the *Sonkajärvi* and *Askola* cases (decisions of 3 July 1991) and in the subsequent court proceedings, which in both cases resulted in a negative decision by the Supreme Administrative Court. The Ministry of the Interior had only applied for a wage supplement on the basis of increased costs arising from the longer commuting for ten persons, including the applicants, referring to earlier practice applied by the Ministry of Finance in the *Mäntyharju* case. Thus, the Ministry of the Interior did not lodge the application on the basis of the loss of the wage supplement arising from the removal of the remote-area allowance. Accordingly, the applicants' case was entirely comparable with the *Askola* case. In fact, where police districts had been incorporated after 3 July 1991, the practice had been not to award compensation in cases comparable to that of the applicants.

91. The Government submitted that the applicants, with one exception (Mr Vilho Eskelinen, who already lived outside Sonkajärvi), had incurred some relatively minor commuting costs following the incorporation. These costs had been tax-deductible and some of the applicants had used police force vehicles for commuting until May 1991. The competence of the County Administrative Board to decide on the wages of local officers

entailed discretionary powers on a case-by-case basis. The policy had been to follow a uniform practice in similar cases.

92. They pointed out that on 4 December 1996 the Ministry of the Interior issued an instruction on compensation in the form of a wage supplement for reductions in wages arising from the changes concerning cold-area allowances and longer commuting as a result of the change in police district division. However, this instruction did not have retroactive effect.

B. The Court's assessment

93. The Court has understood that the applicants complain under Article 1 of Protocol No. 1, either taken alone or in conjunction with Article 14, that the national authorities and courts wrongfully applied the national law when refusing their application.

94. The Court notes that there is no right under the Convention to continue to be paid a salary of a particular amount (see, *mutatis mutandis*, *Kjartan Ásmundsson v. Iceland*, no. 60669/00, § 39, ECHR 2004-IX). It is not sufficient for the applicants to rely on the existence of a "genuine dispute" or an "arguable claim" (§§ 37-38). A claim may only be regarded as an "asset" for the purposes of Article 1 of Protocol No. 1 where it has a sufficient basis in national law, for example where there is settled case-law of the domestic courts confirming it (see *Kopecky v. Slovakia* [GC], judgment of 28 September 2004, *Reports* 2004-IX, p. 144, § 45-52). In the present case it follows from the implementing instruction (see paragraph 22 above) that the applicants did not have a legitimate expectation to receive an individual wage supplement following the incorporation since, as a consequence of the change in duty station to a municipality outside Sonkajärvi, the entitlement to the wage supplement ceased. Nor was there under the domestic law any right to be compensated for commuting costs.

95. As regards Article 14 of the Convention, it complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of them (see *Gaygusuz v. Austria*, judgment of 16 September 1996, *Reports* 1996-IV, p. 1141, § 36; *Domalewski v. Poland* (dec.), no. 34610/97, ECHR 1999-V). In the present case, no other provisions of the Convention have been so engaged.

96. In the circumstances the Court finds that there has been no violation of Article 1 of Protocol No.1 to the Convention either taken alone or in conjunction with Article 14 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

97. Article 41 of the Convention provides:

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

A. Damage

98. The applicants claimed as pecuniary damage EUR 117.73 per month from 1 November 1990 with ten per cent annual interest from the first day of each month. The claims have been itemised below as regards each applicant in terms of the number of months accumulated by 30 September 2006 (the date has been chosen by the applicants) and the total amount per applicant.

Mr Vilho Eskelinen	191 months	in total EUR 22,486.42
Mr Arto Huttunen	191 months	in total EUR 22,486.42
Mr Markku Komulainen	191 months	in total EUR 22,486.42
Mr Toivo Pallonen*	26 months	in total EUR 3,060.98
Ms Lea Ihatsu**	116 months	in total EUR 13,656.68
The estate of Mr Hannu Lappalainen***	58 months	in total EUR 6,828.34

* retired on 1 January 1993: the outcome of the case may affect the amount of his pension,

** left the post on 1 July 2000,

*** died on 22 August 1995: the outcome of the case may affect the amount of the widow's pension.

99. The applicants claimed EUR 10,000 each plus interest as non-pecuniary damage in respect of suffering and distress.

100. The Government pointed out that the applicants had requested pecuniary compensation on two grounds, which should be separated: firstly, the loss of the individual wage supplement and secondly, the increased costs of commuting. The sums and interest claimed were based on assumptions, the exact amount of which, with possible repercussions on pensions etc, should be determined separately after the Court's principal judgment, in agreement with the parties or in a separate judgment.

101. The Government considered the non-pecuniary claims excessive as to quantum. Any compensation should not exceed EUR 1,000 per person. The claims for interest should be rejected.

102. The Court finds that there is no causal link between the violation found concerning the length of the proceedings and the alleged pecuniary damage. Consequently, there is no justification for making any award under

this head. The Court accepts that the applicants have certainly suffered non-pecuniary damage, such as distress and frustration resulting from the excessive length of the proceedings, which is not sufficiently redressed by the finding of a violation of the Convention. Making its assessment on an equitable basis, the Court awards each applicant EUR 2,500.

B. Costs and expenses

103. The applicants claimed EUR 1,622.11 as regards the complaint lodged with the Chancellor of Justice, EUR 1,226.88 for the appeal to the County Administrative Court, EUR 1,688.57 for the appeal to the Supreme Administrative Court and EUR 12,963.40 as regards the Convention proceedings.

104. The Government considered that the costs before the Chancellor of Justice should not be compensated, since an extraordinary complaint is not a prerequisite for lodging a complaint with the Court, that the costs in the national court proceedings should not exceed EUR 2,000 (inclusive of VAT) and that the costs in the Convention proceedings should not exceed EUR 6,200.

105. The Court reiterates that an award under this head may be made only in so far as the costs and expenses were actually and necessarily incurred in order to avoid, or obtain redress for, the violation found and are reasonable as to quantum (see, among other authorities, *Hertel v. Switzerland*, judgment of 25 August 1998, *Reports* 1998-VI, p. 2334, § 63).

In the present case the domestic proceedings were not relevant to exhaustion of the complaint concerning the length of the proceedings, save insofar as they concerned the complaint to the Chancellor of Justice. The applicants' claims can therefore only be sustained to that limited degree, *i.e.* EUR 1,622.11 (inclusive of value-added tax).

The Court finds that the costs and expenses at Strasbourg have been necessarily incurred in order to afford redress for the violation found. However, they cannot be awarded in full as the Court has dismissed the applicants' complaints in part. Having regard to all the circumstances including the legal aid granted by the Council of Europe, the Court awards EUR 8,000 (inclusive of value-added tax).

C. Default interest

106. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Holds* by 12 votes to 5 that Article 6 § 1 of the Convention is applicable in the present case;

2. *Holds* by 14 votes to 3 that there has been a violation of Article 6 § 1 of the Convention as regards the length of the proceedings;

3. *Holds* unanimously that there has been no violation of Article 6 § 1 of the Convention as regards the lack of an oral hearing;

4. *Holds* by 15 votes to 2 that there has been a violation of Article 13 of the Convention;

5. *Holds* unanimously that there has been no violation of Article 1 of Protocol No. 1 to the Convention taken alone or in conjunction with Article 14 of the Convention;

6. *Holds* by 13 votes to 4:
   (a) that the respondent State is to pay, within three months, the following amounts:
      (i) EUR 2,500 (two thousand five hundred euros) to each applicant in respect of non-pecuniary damage;
      (ii) EUR 9,622.11 (nine thousand six hundred twenty-two euros and eleven cents) to the applicants jointly in respect of costs and expenses;
      (iii) any tax that may be chargeable on the above amounts;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* unanimously the remainder of the applicants' claim for just satisfaction.

Done in English and in French, and delivered at a public hearing on 19 April 2007 in Strasbourg.

Erik FRIBERGH
Registrar

Jean-Paul COSTA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following dissenting opinions are annexed to this judgment:

(a) Partially dissenting opinion of Mrs Jočienė;

(b) Joint dissenting opinion of Mr Costa, Mr Wildhaber, Mr Türmen, Mr Borrego Borrego and Mrs Jočienė.

J.-P.C.
E.F.

PARTLY DISSENTING OPINION OF JUDGE JOČIENĖ

I voted against the application of Article 6 § 1 to this case and my opinion on this issue has been reflected in the Joint Dissenting Opinion of Judges Costa, Wildhaber, Türmen, Borrego Borrego and Jočienė.

In this partly dissenting opinion I should like to explain the main reason why I voted against a finding that there has been a violation of Article 6 § 1 of the Convention as regards the length of the proceedings and against a finding of a violation of Article 13. I also voted against making any awards to the applicants in this particular case.

The main reason for my vote is the fact that Article 6 § 1 is not applicable to the proceedings at issue. If Article 6 § 1 is not applicable then, in my opinion, there cannot be any violation of Article 6 § 1 as regards the length of the proceedings.

The same conclusion can be drawn with regard to Article 13. On this specific point I totally agree with the Finnish Government's first argument, put forward in paragraph 78 of the Grand Chamber judgment, to the effect that since there had been no violation of Article 6, there existed no arguable claim under Article 13. Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention's rights and freedoms in whatever form they happen to be secured in the domestic legal order. Thus the effect of Article 13 is to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief. In my opinion, if no such "arguable complaint" under the Convention exists at national level, Article 13 of the Convention cannot be considered to have been violated either.

Finally, I am unable to accept the application of Article 6 § 1 to the case and cannot find any violation of the Convention. For that reason, I voted against any awards to be payable to the applicants.

JOINT DISSENTING OPINION OF JUDGES COSTA, WILDHABER, TÜRMEN, BORREGO BORREGO and JOČIENĖ

(Translation)

1. The heart of this case concerns the applicability of Article 6 § 1 of the Convention to a dispute between individuals belonging to a police service and their employer, the State. The dispute centred on the refusal to pay them allowances arising from a change in their place of work; with one exception, an administrative assistant, the applicants were police officers.

2. Unlike our colleagues in the majority, we considered that Article 6 § 1 was not applicable in this case.

3. The reasoning on which we based our decision consisted in following the approach taken in *Pellegrin v. France* [GC] (no. 28541/95, ECHR 1999-VIII, 8 December 1999).

4. Through this widely-commented and well-known judgment, the Court had sought to "put an end to the uncertainty which surrounds application of the guarantees of Article 6 § 1 to disputes between States and their servants" (§ 61). To this end, it had abandoned criteria such as that relating to the economic nature of the dispute, which "[left] scope for a degree of arbitrariness" (§ 60), in favour of "a functional criterion based on the nature of the employee's duties and responsibilities" (§ 64). While adopting a restrictive interpretation of the exceptions to the safeguards afforded by Article 6 § 1, the Court decided that "the only disputes excluded from the scope of Article 6 § 1 of the Convention are those which are raised by public servants whose duties typify the specific activities of the public service in so far as the latter is acting as the depositary of public authority responsible for protecting the general interests of the State or other public authorities. A manifest example of such activities is provided by the armed forces and the police" (our emphasis) (§ 66).

5. It is well-known that, in defining this functional criterion, the Court relied on the European Commission's legal theory and the case-law of the Court of Justice of the European Communities, reviewed in *Pellegrin* in §§ 37 to 41. In this respect, we disagree with the majority when, in the instant judgment, it refers, in paragraph 60, to a "landmark judgment" of the Court of Justice, namely that delivered in case no. 222/84. Admittedly, that was indeed a landmark judgment, delivered following a request for a preliminary ruling, which held that judicial control reflects a general principle of law (this ECJ judgment, *Marguerite Johnston*, is cited in the joint dissenting opinion of Judges Costa, Tulkens, Fischbach, Casadevall and Maruste, in the *Athanassoglou and Others v. Switzerland* judgment [GC] (no. 27644/95, ECHR 2000-IV, 6 April 2000). However, its scope differs from that which is presumed in the instant judgment. The issue was

not one of determining whether every dispute between the State and its agents fell within the scope of Article 6 of the Convention, but merely of confirming that, by virtue of a general principle of law, every act by a public authority must, in principle, be open to supervision of its lawfulness (such as the *recours pour excès de pouvoir* in French law).

6. In any event, we fail to see what theoretical or practical necessity required the Court to abandon the *Pellegrin* case-law in the present case. It has been applied by the Court for seven years without any real problem and, as could have been expected and desired, it has extended rather than restricted the application of the guarantees secured under Article 6 § 1. The categories of agents excluded from these guarantees, such as the police service in its entirety, are limited when compared with public service employees as a whole (for examples, see paragraph 52 of the judgment). Legal certainty has certainly improved if we compare the situation with that which obtained prior to the *Pellegrin* judgment. As to the argument based on the existence of access to a domestic court, we are not convinced by it. As Article 53 of the Convention rightly points out, nothing prevents a High Contracting Party from recognising in its law freedoms or guarantees which go further than those set forth in the Convention; in addition, as legal systems vary from one State to another, the reasoning in the instant judgment is likely to have the effect of making the applicability of Article 6 § 1 to disputes between the State and its agents dependent on there existing access to a court with jurisdiction to decide them within the domestic legal system. To sum up, instead of the "autonomous interpretation" (by the Court) that the latter considered it important to establish for the purposes of Article 6 § 1 (see the *Pellegrin* judgment, § 63), the instant judgment encourages a dependent and variable, not to say uncertain, interpretation, in other words an arbitrary one. In our opinion, this is an inappropriate step back.

7. In conclusion, the Court has overturned its well-established case-law. Admittedly, it is entitled to do so (even if the case-law in question is relatively recent). In general, however, the Court takes this step where there are new developments and where a new need arises. This is not the case here. Abandoning a solid precedent in such conditions creates legal uncertainty and, in our opinion, will make it difficult for the States to identify the extent of their obligations.