AS TO THE ADMISSIBILITY OF

Application No. 20471/92
by KUSTANNUS OY VAPAA AJATTELIJA AB,
VAPAA-AJATTELIJAIN LIITTO - FRITÄNKARNAS
FÖRBUND r.y. and Kimmo SUNDSTRÖM
against Finland

The European Commission of Human Rights sitting in private on 15 April 1996, the following members being present:

MM. S. TRECHSEL, President
H. DANELIUS
C.L. ROZAKIS
A.S. GÖZÜBÜYÜK
J.-C. SOYER
Mrs. G.H. THUNE
MM. J.-C. GEUS
M.P. PELLONPÄÄ
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
E. KONSTANTINOV
D. SVÁBY
A. PERENIC
C. BÎRSAN
K. HERNDL

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

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

Having regard to the application introduced on 14 June 1992 by KUSTANNUS OY VAPAA AJATTELIJA AB, VAPAA-AJATTELIJAIN LIITTO - FRITÄNKARNAS FÖRBUND r.y. and Kimmo SUNDSTRÖM against Finland and registered on 11 August 1992 under file No. 20471/92;

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

Having regard to the observations submitted by the respondent Government on 17 March and 25 June 1995 as well as 15 February 1996 and the observations in reply submitted by the applicant on 15 May 1995;

Having regard to the parties' oral submissions at the hearing on 15 April 1996;

Having deliberated;

Decides as follows:

THE FACTS

The first applicant (in English "Publishing Company Freethinker Ltd.") is a limited liability company registered in Helsinki. The second applicant ("The Freethinkers' Association") is the registered umbrella association for the Finnish freethinkers. The third applicant is a Finnish citizen, born in 1957 and resident in Helsinki. He is the manager of the applicant company as well as a member of one of the branches of the applicant association. All applicants are represented

by Mr. Martin Scheinin, a law professor at the University of Helsinki.

A. Particular circumstances of the case

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

The applicant company is owned by the applicant association and its local branches. The applicant association is its majority shareholder. According to the applicants, the company was founded in 1982 with the primary aim of publishing and selling books reflecting and promoting the aims of the freethinkers' movement. It was seen as useful and practical to transfer the commercial activities of the association to the company, although this arrangement did not affect the respective tax burden of the two.

According to the company's statutes, its activities consist of:

> "... the publishing of books, magazines, audiovisual products, audio records and tapes as well as the importing, exporting and selling of the above-mentioned products..." (article 2; translation from Finnish).

The company statutes include a clause affording the applicant association and its member associations a right to redeem at their nominal price any shares sold to a non-shareholder.

According to the applicant association's statutes, it functions as:

> "... the contact link between - and umbrella organisation for - the registered associations of freethinkers, atheists and humanists [and as] the defender of [their] interests, legal rights and culture.
>
> The aim of the association is to promote a scientific view of the world as well as to further the activity of its member associations in their work ... towards the separation of the two State Churches from the State and the abolition of their position in public law.
>
> In order to achieve its aim the association ... carries out publishing activities in its field.
>
> ..." (article 2; translation from Finnish).

Finland recognises two State Churches, the Evangelical-Lutheran Church and the Orthodox Church of Finland. Approximately 86 per cent of the population belong to the Evangelical-Lutheran Church and about 1 per cent belong to the Orthodox Church of Finland. A physical person who is not a member of any of the two State Churches is registered in the civil population register, since the State Churches administer their own population registers. None of the applicants are members of any of the State Churches.

On 19 October 1989 the applicant company was ordered to pay church tax (kirkollisvero, kyrkoskatt) for the year of 1988 in the amount of 14,80 FIM (approximately the same in FF). The applicant company paid the tax, but nevertheless lodged a rectification request with the Tax Board (verolautakunta, skattenämnden) of Helsinki.

On 10 May 1990 the Convention and, inter alia, Protocol No. 1 to the Convention entered into force with regard to Finland. On 23 May 1990 the Convention was incorporated into Finnish law (Act no. 439/90).

On 10 March 1991 the applicant company was ordered to pay church

tax for 1989 in the amount of 7,60 FIM. All applicants appealed to the County Administrative Court (lääninoikeus, länsrätten) of Helsinki.

On 26 March 1991 the Tax Board rectified the church tax collected from the company for 1988. However, considering the minor amount collected and in pursuance of the 1978 Decree on Tax Collection (veronkantoasetus, skatteuppbördsförordning 903/78), the tax was not reimbursed. The representative of the City of Helsinki appealed against the decision.

On 20 October 1992 the County Administrative Court found that the applicant company was liable to pay the church tax for 1988. All applicants appealed to the Supreme Administrative Court (korkein hallinto-oikeus, högsta förvaltningsdomstolen).

On 4 January 1992 the applicant company was ordered to pay church tax for 1990 in the amount of 5,04 FIM. All applicants appealed to the County Administrative Court which, on 29 April 1993, considered that the applicant association and Mr. Sundström lacked legal standing as appellants. It furthermore found that the company was liable to pay church tax for the years 1989-90. All applicants appealed to the Supreme Administrative Court.

According to the 1992 Act on Income Tax (tuloverolaki, inkomst-skattelag 1535/92) which entered into force on 1 January 1993, legal persons and associations became liable to pay 25 per cent in tax on their income (later increased to 28 per cent). 0,84 per cent of these tax revenues were to be passed on to the Evangelical-Lutheran and the Orthodox parishes (0,76 and 0,08 per cent respectively). Part of the remaining revenues was to be retained by the State and a further part was to be passed on to the relevant municipality (section 124, subsections 2 and 5).

On 15 November 1994 the applicant company was ordered to pay income tax in the total amount of 457 FIM for 1993. Due to the 1992 Act the amount which was to be passed on to the parishes was no longer specified in the tax assessment. However, in pursuance of that Act the part to be received by the Church amounted to 15,36 FIM. The company requested a rectification of the tax assessment, arguing that the part of the income tax which was to be passed on to the Church should not have been imposed. On 8 December 1994 the applicant association was ordered to pay income tax in the total amount of 556 FIM for 1993. Out of that sum the tax to be passed on to the parishes under the 1992 Act amounted to 18,71 FIM.

In two decisions of 30 December 1994 the Supreme Administrative Court considered that the applicant association and Mr. Sundström lacked legal standing to appeal against the levying of church tax on the applicant company for the years 1988-90. The Court considered that the church tax did not directly affect the association's or Mr. Sundström's own taxation nor had any of them been shown to be responsible for its payment.

The Supreme Administrative Court furthermore rejected the applicant company's appeals. It noted that the company was not a religious community, nor had it been argued that it was a public utility organisation. In the tax returns submitted by the company it had referred to its commercial activities which consisted of the publishing and printing of books. The Court recalled that the 1919 Constitution Act (Suomen Hallitusmuoto, Regeringsform för Finland 94/19) only protected physical persons' freedom of religion. Rendering legal persons liable to pay church tax could not be considered as violating that freedom. Moreover, the levying of church tax on the applicant company neither directly nor indirectly restricted the right under Article 18 para. 1 of the International Covenant on Civil and Political Rights to freedom of thought, conscience and religion. In any case, as regards the church tax levied for the years 1988-89, the

Supreme Administrative Court noted that the domestic legislation incorporating the European Convention on Human Rights ("the Convention") into Finnish law had entered into force only on 23 May 1990. Finally, in regard to the church tax levied for 1990, the Supreme Administrative Court found that the freedom of thought, conscience and religion guaranteed by Article 9 para. 1 of the Convention had not been restricted.

On 4 January 1995 the applicant association lodged a rectification request with the Tax Board, arguing that no taxes should have been imposed for 1993. In the alternative, it argued that the part of the income tax which was to be passed on to the Church should not have been imposed. The association stated, inter alia, as follows:

(translation from Finnish)

"... The association ... is ... a public utility organisation ... . The sales income [at issue; about 2.200 FIM from the sale of urns] directly serves the philosophical goal of the association. In this connection it should be mentioned that, for tax reasons, the responsibility for the further, much larger sale of literature, was previously transferred to an entirely separate limited liability company [i.e. the applicant company] ..."

On 24 January 1995 the Tax Board rejected the applicant company's rectification request concerning that part of the tax imposed for 1993 which was to be passed on to the Church. On the point of principle, the Board referred to the Supreme Administrative Court's decisions of 30 December 1994.

In a decision of 16 February 1995 the Tax Board maintained that the association's sale of urns should be regarded as a commercial activity subject to taxation, since it had not been shown in what manner the activity had been carried out nor how it had promoted the association's goals. Considering the minor character of the activity, the Tax Board nevertheless exempted the association from paying any of the taxes imposed for 1993. The overall amount of wrongly levied tax was later reimbursed to the applicant association.

On 13 September 1995 the applicant company was ordered to pay income tax in the amount of 209 FIM for 1994. Out of that sum the tax to be passed on to the parishes under the 1992 Act amounted to 17,56 FIM.

On request the applicant association has been granted annual State subsidies as from 1973. For instance, for the years 1988-90 and 1993-94 it received a total of 650.000 FIM.

B. Relevant domestic law and practice

According to the 1919 Constitution Act, the rights and obligations of a Finnish citizen shall not depend on whether or not he or she belongs to a certain religious community, if any (section 9, as in force at the relevant time). According to the 1922 Act on Religious Freedom (uskonnonvapauslaki, religionsfrihetslag 267/22), a person who is not a member of either of the two State Churches shall not be obliged to pay church tax (section 12).

According to the 1966 Act on the Official Buildings and Funds of the Evangelical-Lutheran Parishes (laki evankelisluterilaisten seurakuntien virkataloista ja rahastoista, lag om de evangelisk-lutherska församlingarnas boställen och fonder 106/66) and the interpretation thereof, all legal persons as well as other associations (yhteisöt, samfund) liable to pay municipal taxes were to pay church tax despite the fact that none of their members belonged to the

Evangelical-Lutheran Church. Only "persons" who were not members of an Evangelical-Lutheran parish as well as other religious communities and their parishes were exempted by law from paying tax to that Church (section 13 and the Supreme Administrative Court's judgment no. 1970 II 501). With the entry into force of the 1992 Act on Income Tax the 1966 Act in practice lost its applicability.

The 1958 Taxation Act (verotuslaki, beskattningslag), as in force at the material time, did not exclude the exemption of a tax imposed on a person other than a physical one, provided, inter alia, that the collection of the tax would, for a particular reason, be clearly unreasonable (section 125, as amended by Act no. 608/82). In a judgment of 1981 the Supreme Administrative Court held that also a person other than a physical one could be exempted from paying church tax (no. 1981 II 123). On certain grounds the competent tax board could also rectify a taxation (section 87 of the Taxation Act, as in force at the material time).

According to the 1964 Church Act (kirkkolaki, kyrkolag 635/64), a Church body could order that a person other than a physical one should be exempted from church tax, provided that the exemption was based on grounds applicable to exemption from State or municipal tax (section 368, subsection 2, as amended by Act no. 1008/82). According to the 1993 Church Act, the Church Council (kirkkoneuvosto, kyrkorådet) may exempt someone from church tax on the same grounds as those on which that tax payer either has been or could be exempted from State or municipal tax (section 3). The parishes' assets and income shall only be used for the purpose of carrying out the duties of the parishes (chapter 15, section 1).

According to the 1978 Decree on Tax Collection, a wrongly collected tax amount which was smaller than 20 FIM could not be reimbursed (section 9, subsection 2 and section 21, both as amended by Decree no. 811/88). This amount was subsequently increased to 30 FIM (Decree no. 224/93).

The 1989 Act on Associations (yhdistyslaki, föreningslag 503/89) guarantees to anyone the freedom of association with others for idealistic purposes provided these do not contravene law or morals (section 1). The Act is, however, not applicable to an organisation aiming at producing profit or any other direct economic benefit for its members or if the purpose or the nature of its activities is mainly economic (section 2).

COMPLAINTS

1. The applicants complain that the church tax levied on the applicant company for the tax years 1988-1990 violated their right to freedom of religion, having regard to the fact that none of them were members of any of the State Churches at the relevant time. In their submissions of 25 November 1994 the applicants also complain about the levying of church tax on the applicant company for the tax year 1993. Article 9 of the Convention is invoked.

In their submissions of 13 January 1995 the applicant association and Mr. Sundström furthermore complained about the church tax levied on the applicant association for 1993. This complaint was withdrawn on 15 May 1995.

In their submissions of 22 December 1995 the applicants also complain about the levying of church tax on the applicant company for 1994.

2. The applicants furthermore complain that the court determination of the applicant company's "civil rights" following its tax appeals concerning the tax levied for the years 1988-90 was not concluded "within a reasonable time". In particular, the proceedings concerning

the tax levied for 1988 were unduly prolonged due to the appeal lodged by the representative of the City of Helsinki following the Helsinki Tax Board's decision of 26 March 1991. Article 6 para. 1 of the Convention is invoked.

3. Finally, the applicants complain that in view of the minor sums at stake the church tax levied for the years 1988-90 could not have been reimbursed to the applicant company even if the applicants' appeals had been successful. In their submissions of 25 November 1994 the applicants extend this complaint to cover also the church tax levied on the applicant company for 1993. Article 6 para. 1 of the Convention is invoked.

In their submissions of 13 January 1995 the applicant association and Mr. Sundström furthermore complained about the church tax levied on the applicant association for 1993 which could not have been reimbursed either. This complaint was withdrawn on 15 May 1995. In their submissions of 22 December 1995 the applicants also extend this complaint to cover the church tax levied on the applicant company for 1994.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 14 June 1992 and registered on 13 August 1992.

On 30 November 1994 the Commission (First Chamber) decided to communicate the application in its then form to the respondent Government, pursuant to Rule 48 para. 2 (b) of the Rules of Procedure. On 17 January 1995 the Commission decided to communicate also the further aspects of the application raised by the applicants on 13 January 1995.

The Government's written observations were submitted on 17 March 1995 after an extension of the time-limit fixed for that purpose. The applicants replied on 15 May 1995. Additional observations were submitted by the Government on 25 June 1995.

On 16 January 1996 the plenary Commission ordered the transfer of the application to itself pursuant to Article 20 para. 4 of the Convention. On 22 January 1996 it decided to communicate also the further aspects of the application raised by the applicants on 22 December 1995. It furthermore decided to invite the parties to a hearing on the admissibility and merits of the application.

The Government's additional observations were submitted on 15 February 1996. At the Commission's hearing which was held on 15 April 1996 the parties were represented as follows:

The Government

Mr. Holger Rotkirch	Ambassador, Director General for Legal Affairs, Ministry for Foreign Affairs, Legal Department, Agent
Mr. Arto Kosonen	Head of Unit, Ministry for Foreign Affairs, Legal Department, Co-Agent
Mr. Timo Viherkenttä	Director of Business Taxation, Ministry of Finance, Tax Department, Adviser
Mr. Matti Halttunen	Director, National Church Board, Adviser

The applicants

Mr. Martin Scheinin — Dr. iuris, Professor of Law, University of Helsinki

Ms. Johanna Ojala — Lawyer, Adviser

THE LAW

1. The company's obligation to pay church taxes or other taxes reserved for Church activities

The applicants complain under Article 9 (Art. 9) of the Convention that the church tax levied on the applicant company for the years 1988-90 and 1993-94 violated their right to freedom of religion, having regard to the fact that none of them were members of any of the State Churches at the relevant time.

Article 9 (Art. 9) of the Convention reads as follows:

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or in private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

The Government first submit that none of the applicants can claim to be a "victim" within the meaning of Article 25 para. 1 (Art. 25-1) of the Convention of a violation of Article 9 (Art. 9) on account of the tax levied on the applicant company. Admittedly, the applicant association can be considered to have religious and philosophical goals. However, the applicant company is neither a religious or philosophical community nor a non-profitmaking body. For instance, in its tax rectification request of 4 January 1995 the applicant association admitted that the company aims at generating profit for its shareholders. Moreover, in its decisions of 30 December 1994 the Supreme Administrative Court found that the company was functioning on a commercial basis. At any rate, the religious freedom as guaranteed by Article 9 (Art. 9) is, as held by the Court, primarily a matter of individual conscience (Eur. Court H.R., Kokkinakis v. Greece judgment of 25 May 1993, Series A no. 260-A, p. 17, para. 31). In the Government's view Article 9 (Art. 9) cannot therefore be invoked by a company functioning on a commercial basis such as the present applicant company.

The Government furthermore stress that the company statutes do not limit its commercial activities to publishing, importing and exporting material promoting the freethinkers' movement. Moreover, if the company's commercial activities allegedly promoting the movement were of secondary importance, as asserted by the applicants, these activities could legally have been pursued by the applicant association.

The Government add that none of the company's shareholders are responsible for its tax debts or any other obligations. Finally, the tax levied on the applicant company did not affect the taxation of the applicant association or Mr. Sundström, since neither of them could be held responsible for the payment of that tax. In the alternative, the Government argue that the conditions for admissibility prescribed by Article 26 (Art. 26) of the Convention have not been met in regard to the church tax imposed for the tax years 1988-90. The applicants did

not request an exemption from that tax, although domestic practice would seem to show that the nature of the company's activities could have been of relevance to the assessment of whether to grant such an exemption. The applicants thus failed to exhaust a domestic remedy which could not be considered ineffective for the purposes of Article 26 (Art. 26).

Turning to Article 9 (Art. 9) of the Convention in isolation, the Government argue that the complaint is incompatible ratione materiae with the provisions of the Convention as far as relating to the income tax levied on the applicant company for the years 1993-94. Following the entry into force of the 1992 Income Tax Act the tax levied on legal persons and associations was no longer earmarked for any specific purpose. There was thus no direct link between the taxation of the applicant company and the State's contributions to religious communities and activities. The applicants could not derive from Article 9 (Art. 9) any right to refuse to abide by neutral and general tax laws.

In the final alternative, the Government submit that the complaint as a whole is manifestly ill-founded, since there was no lack of respect for the right of any of the applicants to freedom of religion. The company's objections to paying the tax at issue cannot be considered as an exercise of its religious freedom. The Government furthermore recall that the Commission has not objected to a State Church system as such (Darby v. Sweden, Comm. Report 9.5.89, para. 45, Eur. Court H.R., Series A no. 187, pp. 17-18). In Finland various tax revenues cover 75 per cent of the parishes' expenses. The parishes are responsible for carrying out many tasks which benefit the Finnish society as a whole, including persons who do not belong to a State Church. They are, for instance, responsible for the burial of practically every deceased (98 per cent). They maintain most cemeteries, keep population registers and maintain historically valuable buildings. Finally, in cooperation with volunteers the parishes also provide welfare services to any needy person, including non-members of a State Church.

In this connection the Government also recall that under Article 1 of Protocol No. 1 (P1-1) the Contracting States are entitled to enforce such laws as they deem necessary to control the use of property to secure the payment of taxes. A wide margin of appreciation is afforded to the States in this respect. It follows that the Finnish State must be free to make use of tax income for purposes which the applicants may object to. The fact that non-believers are also required to participate in covering Church expenses is not uncommon in member States of the Council of Europe. Finally, the Government stress that the sums which the applicant company had to contribute to the Church were insignificant. In any case, during the years of relevance to the complaint the applicant association received 650.000 FIM in State subsidies.

The applicants contend that they may all claim to be victims within the meaning of Article 25 (Art. 25) of the Convention, since the church tax levied on the applicant company violated their respective right to freedom of religion within the meaning of Article 9 para. 1 (Art. 9-1). Finnish law does not require that a limited liability company should be established and run for the purpose of making a profit or that it should otherwise be of a commercial character. A corporate body may therefore also serve religious or philosophical purposes. Although the applicant company carries out certain modest economic activities, it does not aim at producing profit but at having the Church separated from the State. It was a form of organisation chosen for practical reasons, its aim being to further the ideals of the freethinkers by acting as an integral part of its Finnish movement. The company's real aim is shown, in particular, by the fact that its shares cannot be freely acquired by anyone outside the freethinkers' movement and thus do not have any market value. As a result the shares

cannot become the object of commercial interests. The applicants stress that the company neither was nor could have been established in order to avoid church tax.

Whilst accepting that the rights under Article 9 (Art. 9) are in principle of a personal nature, the applicants argue that these rights can be effectively enjoyed only in community with others. Excluding the applicant company from its entitlement to freedom of religion on account of its corporate character would exclude the applicants from protection afforded to them by Article 9 (Art. 9) merely because they chose to transfer some of their activities to that company. This would be an excessively formalistic approach.

The applicants add that the applicant association is undisputedly working for certain philosophical goals. It also constitutes the applicant company's majority shareholder and had a direct interest in the outcome of the taxation proceedings concerning the company.

As regards Article 26 (Art. 26) of the Convention, the applicants contend that they have exhausted the domestic remedies at their disposal. There existed no absolute right to an exemption from the tax imposed on the company and under no circumstances could an exemption have been granted merely in respect of the church tax. The remedy referred to by the Government was therefore not an effective one for the purposes of Article 26 (Art. 26).

As regards Article 9 (Art. 9) of the Convention in isolation, all applicants contend that their "negative freedom of religion" has been violated on account of the church tax levied on the applicant company. Although the non-believers in Finland largely outnumber the members of the second State Church, only other religious denominations and their parishes are exempted from paying church tax. Moreover, this tax is not used for the benefit of non-members of a State Church. The tax revenues are not earmarked for the purpose of funding the activities which the Church claims it is carrying out as a matter of duty to society, for instance maintaining the cemeteries and the population registration. The tax is only a means of obtaining income to the Church. Even assuming that the church tax compensated the Church for services provided by it, legal persons and associations liable to pay such tax do not make use of those services and cannot be members of the Church.

The applicants further contend that the Church does not carry out functions which cannot otherwise be obtained. For instance, the freethinkers' cemeteries accept any deceased person. None of these cemeteries receive any State subsidies. In addition, the Church does not need the church tax in order to maintain its own cemeteries. In no parish can a non-member of the Church be buried at the same price as a member thereof.

The applicants furthermore point out that on top of the church tax revenues the Church also obtains State subsidies directly out of the State's general tax fund. These subsidies go to religious work in general and cover, for instance, the bishops' salaries and administrative costs. Church schools and publications as well as the upkeep and renovation of Church buildings are also being subsidised by the State.

The applicants underline that it does not follow from the 1992 tax reform that all income tax revenues stay in the State's general tax fund, since part of the tax must still be passed on to the Church. According to the Church legislation, a parish must use its assets and income exclusively in order to carry out its ecclesiastical duties. Legal persons and associations liable to pay income tax are thus still financing religious activities of the Church. How these revenues are spent is outside the State's control.

Finally, the applicants point out that the State subsidies to the

applicant association have been granted on a discretionary basis. These subsidies emanated from the State's general tax fund and cannot be characterised as tax revenues collected for the purposes of supporting the freethinkers' movement. They must therefore be distinguished from the taxes levied on the applicant company which have directly served the interests of the Church.

a) The church taxes imposed for 1988-89

The Commission recalls that in accordance with the generally recognised rules of international law the Convention only governs, for each Contracting Party, facts subsequent to its entry into force with regard to that Party (see, e.g., No. 9453/81, Dec. 13.12.82, D.R. 31 pp. 204, 208). It entered into force with regard to Finland on 10 May 1990.

In the present case the tax assessment concerning, inter alia, the church tax to be levied for the tax year 1988 was made already in 1989. It is true that the tax to be levied for the tax year 1989 was assessed in 1991, i.e. after the entry into force and the incorporation of the Convention. Both of these tax assessments were nevertheless based on an interpretation of the relevant tax legislation as in force in respect of those two tax years.

The Government have not objected to admissibility by arguing that the Commission would lack competence ratione temporis to deal with the present complaint. The Commission considers, however, that it must decide the question concerning its competence of its own motion and regardless of the parties' position. This is so at least in the present case, where it has not been alleged that the taxation at issue created a continuing situation connecting the period before the date of the entry into force of the Convention with the period thereafter (cf. Eur. Court H.R., Papamichalopoulos and Others v. Greece judgment of 24 June 1993, Series A no. 260-B, p. 69, para. 40).

The Commission has repeatedly held that, where the facts consist of a series of legal proceedings, the date of entry into force of the Convention in respect of the Contracting State in question has the effect of dividing the period into two, the earlier part escaping the Commission's jurisdiction ratione temporis, whereas a complaint relating to the later part cannot be rejected on this ground (see, e.g., No. 8261/78, Dec. 11.10.79, D.R. 18 p. 150, confirmed in No. 11306/84, Dec. 16.10.86, D.R. 50 p. 162). On the other hand, where a court gives judgment after the entry into force of the Convention, the Commission is competent to ensure that the proceedings leading up to this judgment were in conformity with the Convention, as the proceedings before a court are embodied in its final decision which thus incorporates any defect by which they may have been affected (ibid.).

The present complaint does not relate to the taxation proceedings as such but to their substantive outcome and effects on the applicants. In these circumstances the Commission considers that it is not competent ratione temporis to examine it, insofar as it pertains to the church taxes imposed for 1988-89 (cf., e.g., Eur. Court H.R., Stamoulakatos v. Greece judgment of 26 October 1993, Series A no. 271, pp. 13-14, paras. 29-33). A different finding would amount to giving the Convention retroactive effect which it does not have.

It follows that this aspect of the complaint is incompatible ratione temporis with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

b) The taxes imposed for 1990 and 1993-94

(i) The Commission has next considered if and to what extent the various applicants may claim status as "victims" within the meaning of

Article 25 para. 1 (Art. 25-1) of the Convention on account of the taxes imposed on the company for 1990 and 1993-94 and either directly or indirectly reserved for Church activities. Under this provision the Commission may receive petitions from any person, non-governmental organisation or group of individuals claiming to be the "victim" of a violation by one of the High Contracting Parties of the rights set forth in this Convention. The term "victim" denotes the person directly affected by the act or omission at issue (see, e.g., Eur. Court H.R., Eckle judgment of 15 July 1982, Series A no. 51, p. 30, para. 66).

In the present case the taxes at issue were levied exclusively on the applicant company and appeals against the taxation could only be brought by the applicant company itself. It is true that the applicant association is the company's majority shareholder. The Commission nevertheless finds that neither the association nor the third applicant was decisively affected by the imposition of the taxes on the company, also having regard to the minor amounts at stake.

In these circumstances the Commission considers that the applicant association and Mr. Sundström cannot claim to be "victims" within the meaning of Article 25 (Art. 25) of a violation of their rights under Article 9. It follows that, insofar as the complaint has been lodged by those applicants and insofar as it pertains to the taxes imposed on the company for 1990 and 1993-94 which were either directly or indirectly reserved for Church activities, it must be rejected as being incompatible ratione personae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

(ii) Insofar as the applicant company was ordered to pay the taxes imposed for 1990 and 1993-94 and either directly or indirectly reserved for Church activities, the Commission recalls that under Article 26 (Art. 26) it may only deal with an application after all domestic remedies have been exhausted, according to the generally recognised rules of international law. An applicant must thus make use of remedies which are effective and adequate. To be effective, a remedy must be capable of remedying directly the impugned state of affairs (see, e.g., No. 13251/87, Dec. 6.3.91, D.R. 68 pp. 137 et seq., at pp. 163-164). The burden of proving the existence of available and sufficient remedies lies upon the State (see, e.g., Eur. Court H.R., Deweer judgment of 27 February 1980, Series A no. 35, p. 15, para. 26). An extraordinary remedy which is dependent on the discretionary power of a public authority cannot be considered an effective remedy for the purposes of Article 26 (Art. 26) (No. 14545/89, Dec. 9.10.90, D.R. 66 pp. 238 et seq., at p. 245).

In the present case the Government have argued that the applicant company should have requested exemption from the taxes imposed for the tax years 1988-90 and reserved for Church activities. Insofar as the company's complaint pertains to 1988-89 the Commission has already found it to be inadmissible for the reasons set out in point a) above. As far as the complaint concerns the tax imposed for 1990, the Commission finds no substantiation of the Government's argument that an exemption request could have afforded the company any reasonable prospects of success. This remedy was rather of an extraordinary character. The Commission does not therefore find that the remedy referred to by the Government was effective for the purposes of Article 26 (Art. 26). It follows that the Government's objection must be rejected.

(iii) Turning to the substance of the complaint, the Commission recalls that the first limb of Article 9 para. 1 (Art. 9-1) guarantees to "everyone" a general right to freedom of thought, conscience and religion which cannot be restricted (see, e.g., Darby v. Sweden, Comm. Report 9.5.89, para. 44, Eur. Court H.R., Series A no. 187, p. 17). The freedom enshrined in Article 9 (Art. 9) is one of the foundations of a "democratic society" within the meaning of the Convention and is, among other characteristics, a precious asset for atheists, agnostics,

sceptics and the unconcerned (see the above-mentioned Kokkinakis judgment, p. 17, para. 31).

The Commission has repeatedly held that a church body or an association with religious and philosophical objects is capable of possessing and exercising the right to freedom of religion, since an application by such a body is in reality lodged on behalf of its members (see No. 7805/77, Dec. 5.5.79, D.R. 16 pp. 68 et seq., at p. 70; No. 8118/77, Dec. 19.3.81, D.R. 25 pp. 105 et seq., at p. 117; No. 12587/86, Dec. 14.7.87, D.R. 53 pp. 241 et seq., at p. 246). By contrast, the Commission has held that a limited liability company, given the fact that it concerns a profit-making corporate body, can neither enjoy nor rely on the rights referred to in Article 9 para. 1 (Art. 9-1) (see No. 7865/77, Dec. 27.2.79, D.R. 16 p. 85; cf. No. 11921/86, Dec. 12.10.88, D.R. 57 pp. 81 et seq., at p. 88).

In the present case the Government have argued that the applicant company is neither a religious nor a philosophical community but a limited liability company which aims at generating profit for its shareholders. Domestic law did not prevent the freethinkers from exercising their allegedly minor commercial activities in the name of the applicant association. The applicant company, for its part, has contended that it was created principally in order to publish and sell books promoting the aims of the freethinkers and not in order to produce profit. It may therefore enjoy freedom of religion within the meaning of Article 9 (Art. 9). A finding to the contrary would effectively limit the freethinkers' possibility of organising themselves with a view to manifesting their beliefs.

The Commission recalls that pursuant to the second limb of Article 9 para. 1 (Art. 9-1) the general right to freedom of religion includes, inter alia, freedom to manifest a religion or "belief" either alone or "in community with others" whether in public or in private. The Commission would therefore not exclude that the applicant association is in principle capable of possessing and exercising rights under Article 9 para. 1 (Art. 9-1). However, the complaint now before the Commission merely concerns the obligation of the applicant company to pay taxes reserved for Church activities. The company form may have been a deliberate choice on the part of the applicant association and its branches for the pursuance of part of the freethinkers' activities. Nevertheless, for the purposes of domestic law this applicant was registered as a corporate body with limited liability. As such it is in principle required by domestic law to pay tax as any other corporate body, regardless of the underlying purpose of its activities on account of its links with the applicant association and its branches and irrespective of the final receiver of the tax revenues collected from it. Finally, it has not been shown that the applicant association would have been prevented from pursuing the company's commercial activities in its own name.

The Commission therefore concludes that in the circumstances of the present case the applicant company cannot rely on the rights referred to in Article 9 para. 1 (Art. 9-1). It follows that, insofar as the complaint has been lodged by the applicant company and insofar as it pertains to the taxes imposed on the company for 1990 and 1993-94 which were either directly or indirectly reserved for Church activities, it must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The length of the proceedings

The applicants furthermore complain that the applicant company's appeals against the church tax levied for the tax years 1988-90 were not determined by a court "within a reasonable time". They invoke Article 6 para. 1 (Art. 6-1) of the Convention which reads, as far as relevant, as follows:

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

The Government submit that Article 6 para. 1 (Art. 6-1) is not applicable to tax assessments.

The applicants contend that Article 6 para. 1 (Art. 6-1) is applicable, relying on the Court's judgments in Salesi v. Italy (Eur. Court H.R., Series A no. 257-E, judgment of 26 February 1993) and Schuler-Zgraggen v. Switzerland (Eur. Court H.R., Series A no. 263, judgment of 24 June 1993). They submit that the Finnish tax legislation applied in the case concerns the legally recognised "rights" of tax payers. These rights are of a pecuniary nature and the tax assessments may furthermore be challenged before administrative courts. The proceedings at issue determined the company's "civil rights" within the meaning of Article 6 para. 1 (Art. 6-1).

For the reasons elaborated below, the Commission need not determine whether and, if so, to what extent it would be competent ratione temporis to examine this complaint. Nor does it need to examine whether the applicant association and Mr. Sundström may claim to be victims within the meaning of Article 25 (Art. 25) of the Convention of a violation of Article 6 para. 1 (Art. 6-1) on account of the facts underlying the present complaint.

The Commission recalls that Article 6 para. 1 (Art. 6-1) is not applicable to taxation proceedings as such, since these do not determine any civil rights or obligations (see No. 11189/84, Dec. 11.12.86, D.R. 50 pp. 121-141, at p. 140, with further references; cf. also Eur. Court H.R., Schouten and Meldrum judgment of 9 December 1994, Series A no. 304, pp. 20-21, para. 50).

It follows that this complaint must be rejected as being incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

3. The non-reimbursement rule

The applicants finally complain that in view of the minor amounts at stake the church tax levied on the applicant company could not have been reimbursed to it, even if the applicants' appeals had been successful. They again invoke Article 6 para. 1 (Art. 6-1) of the Convention.

For the reasons below, the Commission need not determine whether and, if so, to what extent it would be competent ratione temporis to examine this complaint. Nor does it need to examine whether the applicant association and Mr. Sundström may claim to be victims within the meaning of Article 25 (Art. 25) of the Convention of a violation of the Convention or any of its Protocols on account of the facts underlying the present complaint.

The Commission considers that this complaint falls to be examined under Article 1 of Protocol No. 1 (P1-1) to the Convention which reads as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the

payment of taxes or other contributions or penalties."

Assuming that the above provision is applicable, the Commission observes that in view of the minor amounts at stake the applicant company would have been unable to obtain a reimbursement of wrongly levied tax even if an appeal had been successful. This situation could be considered as resulting in a deprivation of the company's possessions within the meaning of the second sentence of the first paragraph of Article 1 (Art. 1-1). Such a deprivation would not only have to pursue a legitimate aim in the public interest, but there would also have to be a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The required balance of public and private interests would not be found, if the company had had to bear an individual and excessive burden (cf., e.g., Eur. Court H.R., Lithgow judgment of 8 July 1986, Series A no. 102, p. 50, para. 120).

In the Commission's opinion the non-reimbursement rule challenged by the applicants must be assumed to aim at avoiding disproportionate administrative costs. This is a legitimate aim in the public interest. Moreover, it has not been shown that the fact that any wrongly levied tax could not be reimbursed has burdened the applicant company excessively. In these circumstances there is no appearance of any improper balancing of interests. The non-reimbursement is, moreover, based on section 9 of the 1978 Decree on Tax Collection and is thus subject to general conditions provided for by law. Accordingly, the Commission finds no appearance that the applicant company's lack of a possibility of obtaining a reimbursement of any wrongly levied tax is in violation of Article 1 of Protocol No. 1 (P1-1).

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

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (S. TRECHSEL)