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

COURT (PLENARY)

CASE OF ALBERT AND LE COMPTE v. BELGIUM

(Application no. 7299/75; 7496/76)

JUDGMENT

STRASBOURG

10 February 1983

In the case of Albert and Le Compte,

The European Court of Human Rights, taking its decision in plenary session in pursuance of Rule 48 of the Rules of Court and composed of the following judges:

Mr. G. WIARDA, *President*,
Mr. R. RYSSDAL,
Mr. J. CREMONA,
Mr. THÓR VILHJÁLMSSON,
Mr. W. GANSHOF VAN DER MEERSCH,
Mrs. D. BINDSCHEDLER-ROBERT,
Mr. D. EVRIGENIS,
Mr. G. LAGERGREN,
Mr. L. LIESCH,
Mr. F. GÖLCÜKLÜ,
Mr. F. MATSCHER,
Mr. J. PINHEIRO FARINHA,
Mr. E. GARCÍA DE ENTERRÍA,
Mr. L.-E. PETTITI,
Mr. B. WALSH,
Sir Vincent EVANS,
Mr. R. MACDONALD,
Mr. C. RUSSO,
Mr. R. BERNHARDT,
Mr. J. GERSING,

and also Mr. M.-A. EISSEN, *Registrar*, and Mr. H. PETZOLD, *Deputy Registrar*,

Having deliberated in private from 28 to 30 September 1982, and from 26 to 28 January 1983,

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

PROCEDURE

1. The case of Albert and Le Compte was referred to the Court by the European Commission of Human Rights ("the Commission"). It originated in two applications against Belgium (nos. 7299/75 and 7496/76) lodged with the Commission in 1975 and 1976 by two Belgian nationals, Dr. Alfred Albert and Dr. Herman Le Compte, under Article 25 (art. 25) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). The Commission ordered the joinder of the applications on 10 July 1979.

2. The Commission's request was lodged with the registry of the Court on 12 March 1982, within the period of three months laid down by Articles 32 para. 1 and 47 (art. 32-1, art. 47). The request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration made by the Kingdom of Belgium recognising the compulsory jurisdiction of the Court (Article 46) (art. 46). The purpose of the Commission's request was to obtain a decision from the Court as to whether the disciplinary proceedings instituted against the applicants before the competent bodies of the Belgian Ordre des médecins (Medical Association) breached the rights guaranteed by the Convention, particularly by Articles 3 and 6 thereof (art. 3, art. 6).

3. The Chamber of seven judges to be constituted included, as ex officio members, Mr. W. Ganshof van der Meersch, the elected judge of Belgian nationality (Article 43 of the Convention) (art. 43), and Mr. G. Wiarda, the President of the Court (Rule 21 3 (b) of the Rules of Court). On 26 March 1982, the President drew by lot, in the presence of the Registrar, the names of the five other members of the Chamber, namely Mr. M. Zekia, Mr. J. Cremona, Mr. D. Evrigenis, Mr. R. Macdonald, and Mr. J. Gersing (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. After assuming the office of President of the Chamber (Rule 21 para. 5), Mr. Wiarda ascertained through the Registrar the views of the Agent of the Belgian Government ("the Government") and the Delegates of the Commission as regards the procedure to be followed. On 3 May 1982, having particular regard to their concurring statements, he concluded that there was no need for memorials to be filed; he also directed that the oral proceedings should open on 27 September.

5. On 28 May 1982, the Chamber decided under Rule 48 to relinquish jurisdiction forthwith in favour of the plenary Court.

6. On 27 August, the President instructed the Registrar to request the Commission to produce several documents to the Court and the Government to furnish certain information. The representatives complied with these requests on 8 and 27 September.

7. The oral proceedings were held in public at the Human Rights Building, Strasbourg, on 27 September 1982. The Court held a preparatory meeting immediately beforehand.

There appeared before the Court:

- for the Government

Mr. J. NISET, legal adviser
at the Ministry of Justice, *Agent*,
Mr. J.-M. NELISSEN GRADE,
Counsel,
Mr. J. PUTZEYS,
Mr. S. GEHLEN, lawyers
for the Ordre des médecins,
Mr. F. VERHAEGEN, adviser

at the Ministry of Public Health,
Mr. F. VINCKENBOSCH, secrétaire d'administration
at the Ministry of Public Health, *Advisers*;
- for the Commission
Mr. G. SPERDUTI,
Mr. M. MELCHIOR, *Delegates*,
Mr. J. BULTINCK, Dr. Le Compte's lawyer
before the Commission, assisting the Delegates (Rule 29 para. 1, second sentence, of the Rules of Court).

THE FACTS

I. THE PARTICULAR CIRCUMSTANCES OF THE CASE

A. Doctor Albert

8. Dr. Alfred Albert is a medical practitioner. He was born in 1908, lives at Molenbeek and is a Belgian national.

9. By letter of 9 April 1974, the Brabant Provincial Council of the Ordre des médecins (Medical Association) notified him of the opening of an enquiry regarding him; it summoned him to appear before its Bureau on 8 May to answer questions in connection with a series of certificates of unfitness for work issued by him, asking him to bring with him the medical files of the patients concerned.

The applicant appeared on the prescribed date. The Bureau of the Provincial Council informed him that he was accused of having issued spurious certificates.

On 16 May, the President of the Provincial Council sent Dr. Albert a registered letter which read:

> "Dear Colleague,
>
> The Brabant Council of the Ordre des médecins requests the honour of your appearance before it on Tuesday, 4 June 1974 at 8.30 p.m., 32 Place de Jamblinne de Meux, in order to present your defence in connection with the following complaint, namely that of
>
> - having issued various certificates of unfitness for work, in particular:
>
> on 26.12.1973 to B..., on 7.1.1974 to T..., on 9.1.1974 to A...,

without having satisfied yourself in a strict manner, by means of a sufficiently thorough examination, of the justification of the unfitness for work and while not possessing any medical record in relation to these patients,

these facts having compromised the reputation, probity and dignity of the medical profession.

The case-file concerning you may be consulted at the Council's office on any working day from 9.00 a.m. until 11.30 a.m., and from 2.00 p.m. 5.00 p.m., except on Saturday afternoon, from 18 to 31 May inclusive.

You may be assisted by one or more lawyers.

Yours faithfully ..."

On 4 June, the Provincial Council heard Dr. Albert and suspended his right to practise medicine for a period of two years. It found that Dr. Albert had "carried out no medical examinations such as to warrant finding a state of unfitness for work", that he had been unable to produce "any medical document whatsoever capable of establishing" such a state, and that neither had "his memory permitted him ... to come forward with any justification". It considered that "it ought to impose a very severe sanction" in view of "the very serious disciplinary record" of the applicant (two suspensions from practice following criminal convictions).

Mr. Albert was notified of the decision on 11 June.

10. Dr. Albert appealed to the French-language Appeals Council of the Ordre on 18 June. The Provincial Council's legal assessor did likewise on 26 June in order to have the penalty increased.

On 19 November, the Appeals Council upheld the decision given at first instance.

11. By judgment of 12 June 1975, the Court of Cassation rejected the applicant's appeal on a point of law alleging violation of the rights of defence and, in so far as relevant, of Article 97 of the Constitution.

B. Doctor Le Compte

12. Dr. Herman Le Compte, a Belgian national born in 1929 and living at Knokke-Heist, is a medical practitioner.

13. On 22 February 1974, the West Flanders Provincial Council of the Ordre des médecins informed him that an enquiry had been ordered concerning him for "improper publicity" (ongeoorloofde publiciteit) and "contempt (beledigingen) of the Ordre": he had given three interviews to magazines and sent a letter to the President of the Provincial Council.

On 26 March, the applicant wrote to the said President to advise him of his intention to exercise his right, under sections 40 an 41 of the Royal Decree of 6 February 1970, to challenge the Provincial Council's members as a whole.

On 27 March, the Provincial Council, by decision rendered in absentia, rejected the applicant's challenge and suspended his right to practise medicine for a period of two years.

14. The applicant entered an appeal on 5 April 1974. He alleged, amongst other things, violation of Article 6 para. 1 (art. 6-1) of the Convention:

> "This provision of the Convention guarantees to a litigant that his case will be dealt with at a public hearing by an independent and impartial tribunal. In the particular circumstances of the case, neither of these two guarantees was assured.
>
> (a) Cases before the Councils of the Ordre des médecins are not dealt with at a public hearing even though no reason of public policy exists for dealing with cases in camera or, at least, for pronouncing decisions in camera. Consequently, honest treatment in accordance with the principles of the European Convention is rendered impossible.
>
> (b) The Councils of the Ordre are, by reason of their membership alone, neither independent nor impartial since half of their members are other medical practitioners." (Translation from Dutch)

The legal assessor of the Provincial Council did not avail himself of his own right to appeal.

On 28 October, the Dutch-language Appeals Council rejected the grounds challenging its members and changed the applicants' suspension into striking his name from the register of the Ordre.

On 4 November, Dr. Le Compte lodged an objection (opposition) against this decision, which had been given in absentia.

As he had been summoned to appear at a hearing on 16 December, he lodged a further challenge on 6 December against the Appeals Council's members as a whole.

On 6 January 1975, the Appeals Council rejected both the objection and the challenge.

15. The applicant thereupon appealed on a point of law to the court of Cassation, but his appeal was dismissed by judgment of 7 November 1975, which was notified to him on 25 November.

16. The striking of Dr. Le Compte's name from the register of the Ordre took effect on 26 December.

Under sections 7 para. 1 and 31 of Royal Decree No. 79 of 10 November 1967 and section 38 para. 1 of Royal Decree No. 78 of the same date, being struck off the register has the consequence of debarring him from practising medicine.

II. THE ORDRE DES MEDECINS

17. Belgian legislation on the Ordre des médecins, particularly on the organs of the Ordre and the procedure followed in disciplinary matters, is

described in the Le Compte, Van Leuven and De Meyere judgment of 23 June 1981 (Series A no. 43, pp. 11-17, paras. 20-34). The Court refers back to this judgment in this connection.

PROCEEDINGS BEFORE THE COMMISSION

18. Dr. Albert applied to the Commission on 10 December 1975, Dr. Le Compte on 6 May 1976.

Both applicants alleged a breach of Article 6 para. 1 (art. 6-1) of the Convention. They maintained in particular that they had not been given a fair and public hearing within a reasonable time by and independent and impartial tribunal established by law.

Dr. Albert further asserted that he had not received the benefit of the guarantees of Article 6 paras. 2 and 3 (a), (b) and (d) (art. 6-2, art. 6-3-a, art. 6-3-b, art. 6-3-d).

Dr. Le Compte, for his part, contended that the striking of his name from the register of the Ordre was an inhuman or degrading punishment in breach of Article 3 (art. 3) and that the obligation to join the Ordre and submit to its disciplinary organs violated Article 11 (art. 11) taken on its own or in conjunction with Article 17 (art. 17+11).

19. The Commission declared both applications admissible on 4 December 1979 after ordering their joinder on 10 July 1979 under Rule 29 of its Rules of Procedure.

In its report of 14 December 1981 (Article 31 of the Convention) (art. 31), its expressed the opinion:

- that there had been no violation of Article 3 (art. 3) (unanimously);
- that neither Dr. Albert (8 votes to 4, with 1 abstention) nor Dr. Le Compte (12 votes, with 1 abstention) had been subject to a "criminal charge";
- that Article 6 para. 1 (art. 6-1) applied to the "contestations" (disputes) over "civil rights and obligations" which had led to the disciplinary measures taken against the applicants (12 votes to 1);
- that, in the circumstances, the organs of the Ordre were "established by law" and were "independent" (10 votes, with 3 abstentions);
- that Dr. Albert (7 votes to 4, with 2 abstentions) and Dr. Le Compte (8 votes to 1, with 4 abstentions) had been given a hearing by an "impartial tribunal";
- that Article 6 para. 1 (art. 6-1) had been violated in that neither applicant had been given a "public hearing" (11 votes to 1, with 1 abstention).

Noting that Dr. Le Compte’s allegations regarding Article 11 (art. 11) were similar to those he had made in the case of Le Compte, Van Leuven

and De Meyere, the Commission referred back to its report of 14 December 1979 (paras. 61-65) and to the Court's judgment of 23 June 1981 (Series A no. 43, p. 17, para. 36, and pp. 26-27, paras. 62-66).

The report contains four separate opinions.

FINAL SUBMISSIONS MADE TO THE COURT

20. At the hearing held on 27 September 1982, the Government requested the Court

> "to hold that there has been, in the present cases, no violation of Article 3 (art. 3) or of any of the provisions of Article 6 (art. 6) of the Convention".

AS TO THE LAW

I. ALLEGED BREACH OF ARTICLE 3 (art. 3)

21. One of the applicants, Dr. Le Compte, invoked Article 3 (art. 3) of the Convention, which provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

In his submission, his being struck off the register of the Ordre des médecins constituted a degrading, if not inhuman, punishment both in its nature and in its effects on his private, professional and family life.

22. The Court concurs in substance with the contrary opinion expressed by the Commission in paragraph 57 of its report. It observes that withdrawal, as a disciplinary measure, of the right to practise is intended to penalise a doctor whose serious misconduct has shown that he no longer satisfies the required conditions for exercising the medical profession. The Court sees no cause to question the very principle of the legitimacy of measures of this kind, which moreover exist in the majority of the member States of the Council of Europe. Neither is it called upon to determine whether this measure was justified in the present case.

Taken on its own, the withdrawal complained of had as its object the imposition of a sanction on Dr. Le Compte for the misconduct imputed to him, but not the debasement of his personality; nor, as far as its consequences are concerned, did it adversely affect his personality in a manner incompatible with Article 3 (art. 3).

There has accordingly been no breach of that Article (art. 3).

II. ALLEGED BREACH OF ARTICLE 6 PARA. 1 (art. 6-1)

23. Doctors Albert and Le Compte claimed to be victims of violations of Article 6 para. 1 (art. 6-1) of the Convention, which reads:

> "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."

24. The first matter for decision is whether this provision is applicable; the Commission and the applicants affirmed that it was, but this was disputed by the Government.

A. Applicability of article 6 para. 1 (art. 6-1)

25. Article 6 para. 1 (art. 6-1) applies only to the determination of "civil rights and obligations or of any criminal charge" (in the French text: "contestations sur [des] droits et obligations de caractère civil" and "bien-fondé de toute accusation en matière pénale"). As the Court has held on several occasions, there are some cases (in the French text: "causes") which are not comprised within either of these categories and which thus fall outside the ambit of Article 6 para. 1 (art. 6-1) (see the above-mentioned Le Compte, Van Leuven and De Meyere judgment, Series A no. 43, p. 19, para. 41, and the references therein to previous case law)

Disciplinary proceedings do not ordinarily lead to a contestation (dispute) over "civil rights and obligations"; however, the position may be otherwise in certain circumstances (ibid., p. 19, para. 42). Again, disciplinary proceedings as such cannot be characterised as "criminal", although this may not hold good for certain specific cases (see the Engel and others judgment of 8 June 1976, Series A no. 22, pp. 33-36, paras. 80-85).

26. As in the case of Le Compte, Van Leuven and De Meyere, it is necessary to determine whether Article 6 para. 1 (art. 6-1) applied to the whole or part of the proceedings that took place before the provincial and Appeals Councils, which are disciplinary organs, and subsequently before the Court of Cassation.

1. Existence of "contestations" (disputes) over "civil rights and obligations"

27. Dr. Le Compte and, in his alternative submission, Dr. Albert contended that the disciplinary proceedings taken against them gave rise to "contestations" (disputes) over their "civil rights and obligations".

The issue thus raised is to a large extent the same as that already decided in the judgment of 23 June 1981, a judgment delivered by the plenary Court (Rule 48 of the Rules of Court). The Court sees no cause to depart from that judgment, especially since Dr. Le Compte, the Government and the Commission each referred back to their respective arguments in the case of Le Compte, Van Leuven and De Meyere.

As in that case, the evidence discloses the existence of a veritable "contestation" (dispute). The Ordre des médecins alleged that the applicants had committed professional misconduct rendering them liable to sanctions and they denied those allegations. After the Provincial Council had found them guilty and ordered their suspension from practice - decisions that were taken after hearing Dr. Albert's submissions on issues of fact and of law in his case (Brabant) and in absentia in the case of Dr. Le Compte (West Flanders) -, the applicants appealed to the Appeals Council. Their appeals proved unsuccessful, whereupon they applied to the Court of Cassation (see paragraphs 11 and 15 above).

28. In addition, it must be shown that the "contestation" (dispute) related to "civil rights and obligations", in other words that the "result of the proceedings" was "decisive" for such a right (see the Ringeisen judgment of 16 July 1971, Series A no. 13, p. 39, para. 94).

(a) On the first point (direct relationship between the "contestation" (dispute) and a right), the Court would recall that a tenuous connection or remote consequences do not suffice for Article 6 para. 1 (art. 6-1): a right must be the object - or one of the objects - of the "contestation" (dispute) (see the above-mentioned Le Compte, Van Leuven and De Meyere judgment, Series A no. 43, p. 21, para. 47).

According to the Government, "the sole object of disciplinary proceedings" is to "investigate" and "decide whether the person being proceeded against has contravened the rules of professional conduct" or "damaged the reputation or dignity of the profession and, if so", "to impose a disciplinary sanction on him".

The Court is unable to share this point of view. The suspensions ordered by the Provincial Council against Dr. Albert on 4 June 1974 and against Dr. Le Compte on 27 March 1974 were to deprive them temporarily of their right to practise medicine. The appeals they brought were primarily aimed at having the measures in question cancelled. The right to practise was therefore directly in issue before the Appeals Council, which moreover could, and in the case of Dr. Le Compte did, increase the severity of the sanction. It remained in issue before the Court of Cassation, which likewise

was required to examine - within the limits of its jurisdiction - the applicants' complaints against the decisions affecting them.

(b) On the second point (whether it was a civil right), the Court notes that - as in the König case and the case of Le Compte, Van Leuven and De Meyere - the right in issue was the right to continue to exercise the medical profession. In its judgments of 28 June 1978 and 23 June 1981, the Court found that, in the particular circumstances of each of the two last-mentioned cases, this was a private right and thus a civil right within the meaning of Article 6 para. 1 (art. 6-1); it therefore concluded that Article 6 para. 1 (art. 6-1) was applicable (Series A no. 27, p. 32, para. 95, and Series A no. 43, p. 22, para. 48).

The effect of the disciplinary sanctions in question was to divest the applicants, temporarily (Dr. Albert) or permanently (Dr. Le Compte), of the aforesaid right, which they had duly acquired and which allowed them to pursue the goals of their professional life.

It is not for the Court to go beyond the facts submitted for its consideration and determine whether, for the medical profession as a whole, this right profession as a whole, this right is a civil right, within the meaning of Article 6 para. 1 (art. 6-1) (see notably, mutatis mutandis, the Golder judgment of 21 February 1975, Series A no. 18, p. 19, para. 39). It is sufficient to note that it is by means of private relationships with their client and patients that doctors in private practice, such as the applicants, avail themselves of the right to continue to practise; in Belgium, the relationships are usually contractual and, in any event, are directly established between individuals on a personal basis. Accordingly, the right to continue to practise constituted, in the case of the applicants, a private right and thus a civil right within the meaning of Article 6 para. 1 (art. 6-1), notwithstanding the specific character of the medical profession - a profession which is exercised in the general interest - and the special duties incumbent on its members.

29. Since the "contestation" (dispute) over the decisions taken against them concerned a "civil right", the applicants were entitled to have their cases (in French: "causes") heard by a "tribunal" satisfying the conditions laid down in Article 6 para. 1 (art. 6-1) (see the above-mentioned Golder judgment, Series A no. 18, p. 18, para. 36). In many member States of the Council of Europe, the duty of adjudicating on disciplinary offences is conferred on jurisdictional organs of professional associations. Even in instances where Article 6 para. 1 (art. 6-1) is applicable, conferring powers in this manner does not in itself infringe the Convention (see the above-mentioned Le Compte, Van Leuven and De Meyere judgment, Series A no. 43, p. 23, first sub-paragraph). Nonetheless, in such circumstances the Convention calls at least for one of the two following systems: either the jurisdictional organs themselves comply with the requirements of Article 6 para. 1 (art. 6-1), or they do not so comply but are subject to subsequent

control by a judicial body that has full jurisdiction and does provide the guarantees of Article 6 para. 1 (art. 6-1).

In the present instance, the applicants' cases were dealt with by three bodies, namely the Provincial Council, the Appeals Council and the Court of Cassation. As in the case of Le Compte, Van Leuven and De Meyere, the Court does not consider it indispensable to pursue this point as regards the Provincial Council (ibid.). On the other hand, the Court must satisfy itself that before the Appeals Council or, failing that, before the Court of Cassation Dr. Albert and Dr. Le Compte had the benefit of the "right to a court" (see the above-mentioned Golder judgment, Series A no. 18, p. 18, para. 36) and of a determination by a tribunal of the matters in dispute (see the above-mentioned König judgment, Series A no. 27, p. 34, para. 98 in fine), both for questions of fact and for questions of law.

2. Existence of "criminal charges"

30. The main contention of Dr. Albert - but not of Dr. Le Compte - was that the organs of the Ordre des médecins were required to determine a "criminal charge". The government disputed this; they asserted in particular that Article 6 para. 1 (art. 6-1), assuming it to be applicable, could not come into operation at one and the same under the head of "civil rights and obligations" and under the head of "criminal charge".

When deciding on the admissibility of the applications, the Commission did not rule out the criminal aspect of Article 6 para. 1 (art. 6-1). The Commission then examined the nature of the acts of misconduct of which the applicants had been accused - certain of these acts could have given rise to criminal prosecution - and the severity of the penalties imposed; it concluded in its report, however, that neither Dr. Albert nor Dr. Le Compte had been subject to a "criminal charge".

For its part, the Court does not believe that the two aspects, civil and criminal, of Article 6 para. 1 (art. 6-1) are necessarily mutually exclusive (see the above-mentioned Engel and others judgment, Series A no. 22, pp. 36-37, para. 87; the above-mentioned König judgment, Series A no. 27, pp. 32-33, para. 96; and the above-mentioned Le Compte, Van Leuven and De Meyere judgment, Series A no. 43, pp. 23-24, paras. 52-53). Nonetheless, the Court does not consider it necessary to decide whether, in the specific circumstances, there was a "criminal charge". In point of fact, paragraph 1 of Article 6 (art. 6-1), violation of which was alleged by the two applicants, applies in civil matters as well as in the criminal sphere (see the above-mentioned Le Compte, Van Leuven and De Meyere judgment, Series A no. 43, pp. 23-24, para. 53). Dr. Albert relied in addition on paragraph 2 and on sub-paragraphs (a), (b) and (d) of paragraph 3 (art. 6-2, art. 6-3-a, art. 6-3-b, art. 6-3-d), but, in the opinion of the Court, the principles enshrined therein are, for the present purposes, already contained in the notion of a fair trial as embodied in paragraph 1 (art. 6-1); the Court will therefore take these

principles into account in the context of paragraph 1 (art. 6-1) (see paragraphs 38-42 below).

B. Compliance with Article 6 para. 1 (art. 6-1)

31. In the case of Le Compte, Van Leuven and De Meyere, the Court investigated whether the Appeals Council and the Court of Cassation in fact constituted "tribunals" that were "established by law", "independent" and "impartial", and had afforded the applicants a "public hearing". In the present case, the Court does not adjudge it necessary to revert to the first three points; it had, as had the Commission, come to the conclusion that no violation had occurred.

There thus remain the guarantees of impartiality and publicity.

1. Impartiality

32. No issue can be taken as to the impartiality of the Court of Cassation (see the above-mentioned Le Compte, Van Leuven and De Meyere judgment, Series A no. 43, p. 25, para. 58).

With regard to the Appeals Council, the Commission no longer maintained that the Council's medical members had to be considered as unfavourable to the applicants since they had interests very close to those of one of the parties to the proceedings (ibid.); the Commission further noted that Dr. Le Compte - but not Dr. Albert - had endeavoured to challenge the Council's medical members as a whole, without however putting forward any specific complaint against one or other of them (see paragraph 14 above). Whilst stating reservations as to the impartiality of the instruction as such, the Commission expressed the opinion that on this point, no violation of Article 6 para. 1 (art. 6-1) had occurred.

The Court concurs with this conclusion. In principle, the personal impartiality of the members of a "tribunal" must be presumed until there is proof to the contrary (see the above-mentioned Le Compte, Van Leuven and De Meyere judgment, ibid.); Dr. Le Compte did indeed avail himself of his right of challenge, but he did so in such a vague fashion that his objection could not be regarded as well-founded (see paragraph 14 above). As for impartiality judged from an objective and organisational point of view (see, mutatis mutandis, the Piersack judgment of 1 October 1982, Series A no. 53, pp. 14-15, para. 30), there is nothing in the material submitted to prompt the Court to call the matter into question. In particular, the manner of appointment of the medical practitioners sitting on the Appeals Councils provides no cause for treating those individuals as biased: although elected by the Provincial Councils (see the above-mentioned Le Compte, Van Leuven and De Meyere judgment, Series A no. 43, p. 14, para. 26), they act not as representatives of the Ordre des médecins but - like the legal members nominated by the Crown - in a personal capacity.

2. Publicity

33. Under Belgian law, the professional jurisdictional organs and the Court of Cassation are governed by different rules regarding publicity.

(a) Before the Appeals Council

34. Under the Royal Decree of 6 February 1970, all publicity before the Appeals Council is excluded, both for hearings and for pronouncement of the decision. Unless remedied at a later stage of the procedure, a prohibition of this kind may deprive the persons concerned of one of the safeguards set forth in the first sentence of Article 6 para. 1 (art. 6-1) of the Convention. Subject to the exceptions permitted by the second sentence, the defendant medical practitioner is entitled to such publicity if, during the course of disciplinary proceedings brought against him, there arises a contestation (dispute) over civil rights and obligations (see the above-mentioned Le Compte, Van Leuven and de Meyere judgment, Series A no. 43, p. 25, para. 59).

The conditions upon which Article 6 para. 1 (art. 6-1) makes the various exceptions dependent were not met in respect of Dr. Le Compte. The Court notes in particular that, as in the case of Le Compte, Van Leuven and de Meyere (ibid.), the very nature of the misconduct alleged against Dr. Le Compte and of his own complaints against the Ordre (see paragraphs 13-14 above) was not concerned with the medical treatment of his patients. There is nothing to suggest that one of the grounds listed in the second sentence of Article 6 para. 1 (art. 6-1) could have justified sitting in camera.

In respect of Dr. Albert the matter is different, in that the offences of which he was accused (see paragraph 9 above) related directly to the exercise of the medical profession, which might conceivably raise questions coming within the exceptions listed in Article 6 para. 1 (art. 6-1). However, the material submitted to the Court does not suffice to show that the circumstances were such as to warrant the absence of publicity.

35. The rule requiring a public hearing, as embodied in Article 6 para. 1 (art. 6-1), may also yield in certain circumstances to the will of the person concerned. Admittedly, the nature of some of the rights safeguarded by the Convention is such as to exclude a waiver of the entitlement to exercise them (see the De Wilde, Ooms and Versyp judgment of 18 June 1971, Series A no. 12, p. 36, para. 65), but the same cannot be said of certain other rights. Thus, neither the letter nor the spirit of Article 6 para. 1 (art. 6-1) would prevent a medical practitioner from waiving, of his own free will and in an unequivocal manner (see the Neumeister judgment of 7 May 1974, Series A no. 17, p. 16, para. 36), the entitlement to have his case heard in public; conducting disciplinary proceedings of this kind in private does not contravene Article 6 para. 1 (art. 6-1) if the domestic law so permits and this is in accordance with the will of the person concerned (see the above-

mentioned Le Compte, Van Leuven and de Meyere judgment, Series A no. 43, p. 25, para. 59).

However, far from giving any agreement to this effect, Dr. Le Compte had sought to have a public hearing (see paragraph 14 above). Article 6 para. 1 (art. 6-1) did not provide any justification for denying him such a hearing, as none of the circumstances of exception set out in its second sentence existed (see paragraph 34 above). Dr. Albert, for his part, had made no similar request, but the evidence before the Court does not establish that he intended to waive the publicity to which he was entitled under the Convention.

(b) Before the Court of Cassation

36. The public character of the cassation proceedings does not suffice to remedy the defect found to exist at the stage of the disciplinary proceedings. The Court of Cassation does not take cognisance of the merits of the case, which means that many aspects of "contestations" (disputes) concerning "civil rights and obligations", including review of the facts and assessment of the proportionality between the fault and the sanction, fall outside its jurisdiction (see the above-mentioned Le Compte, Van Leuven and De Meyere judgment, Series A no. 43, p. 16, para. 33).

37. To sum up, the cases (in French: "causes") of Dr. Albert and Dr. Le Compte were not heard publicly by a tribunal competent to determine all the aspects of the matter and pronouncing judgment publicly. In this respect, there was, in the particular circumstances, a breach of Article 6 para. 1 (art. 6-1).

III. ALLEGED BREACH OF ARTICLE 6 PARAS. 2 AND 3 (a), (b) AND (d) (art. 6-2, art. 6-3-a, art. 6-3-b, art. 6-3-d)

38. One of the two applicants, Dr. Albert, claimed that he had not received the benefit of the guarantees set forth in paragraph 2 of Article 6 (art. 6-2) and in three sub-paragraphs of paragraph 3 (art. 6-3-a, art. 6-3-b, art. 6-3-d):

> "2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> ...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

..."

Having concluded that the applicants had not been subject to a "criminal charge" (see paragraph 19 above), the Commission did not express any opinion on these claims, which had been disputed by the Government.

39. For its part, the Court considered it unnecessary to give a ruling on the applicability of paragraph 1 of Article 6 (art. 6-1) under the criminal head, but decided to examine in the context of the interpretation of the notion of "fair trial" in paragraph 1 (art. 6-1) the substance of the complaints made by the applicant under paragraphs 2 and 3 (art. 6-2, art. 6-3) (see paragraph 30 above). In the opinion of the Court, the principles set out in paragraph 2 (art. 6-2) and in the provisions of paragraph 3 invoked by Dr. Albert (that is to say, only sub-paragraphs (a), (b) and (d)) (art. 6-3-a, art. 6-3-b, art. 6-3-d) are applicable, mutatis mutandis, to disciplinary proceedings subject to paragraph 1 (art. 6-1) in the same way as in the case of a person charged with a criminal offence.

40. As regards observance of the presumption of innocence, Dr. Albert made three criticisms of the Brabant Provincial Council of the Ordre des médecins: allowing itself to be influenced by his previous criminal record, basing its decision on insufficient evidence and having declined to hear evidence in rebuttal.

None of these claims stands up to examination. As the text of the decision of 4 June 1974 clearly shows, the Provincial Council did indeed take account of the applicant’s previous record for the purposes of fixing the sanction, but the principle enshrined in Article 6 para. 2 (art. 6-2) does not preclude this (see the above-mentioned Engel and others judgment, Series A no. 22, pp. 37-38, para. 90). The Provincial Council grounded its opinion on a series of concordant factors, including Dr. Albert’s own statements. Finally, at no stage did Dr. Albert offer evidence in rebuttal.

41. Under paragraph 3 of Article 6 (art. 6-3), the applicant asserted that he had not been informed in detail of the accusations against him, that he had not had adequate time for the preparation of his defence and that he had not had the benefit of the right to obtain the attendance and examination of witnesses on his behalf. These allegations are unfounded. The letter written to Dr. Albert by the President of the Provincial Council and inviting him to appear before the Bureau of the Council specified the nature and cause of the complaints made against him by the Ordre (see paragraph 9 above). In addition, the applicant had more than fifteen days in which to prepare his defence. A time-limit of this length, which is provided for under section 25 of the Royal Decree of 6 February 1970, appears in itself to be reasonable, especially in view of the lack of complexity of the case. Finally, there is

nothing in the evidence to suggest that Dr. Albert endeavoured to obtain the attendance and examination of witnesses on his behalf and was met with a refusal.

42. Accordingly, the Court considers that in this respect there was no violation of Article 6 (art. 6).

IV. ALLEGED BREACH OF ARTICLE 11 (art. 11)

43. One of the two applicants, Dr. Le Compte, alleged a breach of Article 11 (art. 11), which reads:

> "1. Everyone has the right to freedom of peaceful assembly and freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article (art. 11) shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

In the submission of Dr. Le Compte, the obligation to join the Ordre des médecins (see the above-mentioned Le Compte, Van Leuven and De Meyere judgment, Series A no. 43, p. 12, para. 21) inhibited freedom of association - which implied freedom not to associate - and went beyond the limits of the restrictions permitted under paragraph 2 of Article 11 (art. 11-2); furthermore, so he contended, the very existence of the Ordre had the effect of eliminating freedom of association.

In view of its opinion of 14 December 1979 on applications nos. 6878/75 75 and 7238/75 of Doctors Le Compte, Van Leuven and de Meyere (see the above-mentioned judgment of 23 June 1981, Series A no. 43, p. 26, para. 63), the Commission considered it pointless in the instant case to hear fresh argument on observance of Article 11 (art. 11). The parties therefore referred back to their previous submissions before the Commission and the Court. During the hearing held on 27 September 1982, those appearing before the Court - and notably counsel for Dr. Le Compte - did not revert to the question.

44. The Court sees no cause to depart from the decision it gave on this same issue in its judgment of 23 June 1981 (ibid., pp. 26-27, paras. 64-66). It is sufficient to recall the following: that the Ordre des médecins cannot be regarded as an association within the meaning of Article 11 (art. 11); that the existence of the Ordre and the resultant obligation on practitioners to be entered on its register and to be subject to the authority of its organs clearly have neither the object nor the effect of limiting, even less suppressing, the right safeguarded by Article 11 para. 1 (art. 11-1); and that there is thus no

reason to examine the case under paragraph 2 of Article 11 (art. 11-2) or to determine whether the Convention recognises the freedom not to associate.

V. APPLICATION OF ARTICLE 50 (art. 50)

45. At the hearing, counsel for Dr. Le Compte asked the Court, in the event of its finding a breach of the Convention, to afford his client just satisfaction under Article 50 (art. 50). However, he was of the view that the question was not yet ready for decision.

The Commission's Delegates, for their part, requested the Court to defer ruling on this point in the absence of any indication from Dr. Albert or his counsel.

The Government made no submissions on the issue.

46. Accordingly, although it was raised under Rule 47 bis of the Rules of Court, this question is not yet ready for decision and must be reserved; in the circumstances of the case, the Court considers that the question should be referred back to the Chamber under Rule 50 para. 4 of the Rules of Court.

FOR THESE REASONS, THE COURT

1. Holds unanimously that there has been no breach of Article 3 (art. 3) of the Convention with respect to Dr. Le Compte;

2. Holds by sixteen votes to four that Article 6 para. 1 (art. 6-1) was applicable to the hearing of the case (in French: "cause") of each of the applicants;

3. Holds by sixteen votes to four that there has been a breach of Article 6 para. 1 (art. 6-1) in that the applicant's cases (in French: "causes") were not heard publicly by the Appeals Council and that the latter did not pronounce its judgment publicly;

4. Holds unanimously that there has been no breach of Article 6 (art. 6) as regards the applicants' other complaints, and no breach of Article 11 (art. 11) with respect to Dr. Le Compte;

5. Holds unanimously that the question of the application of Article 50 (art. 50) is not yet ready for decision;

accordingly,

(a) reserves the whole of the said question;

(b) refers the said question back to the Chamber under Rule 50 para. 4 of the Rules of Court.

Done in English and in French, the French text being authentic, at the Human Rights Building, Strasbourg, this tenth day of February, one thousand nine hundred and eighty-three.

Gérard WIARDA,
President

Marc-André EISSEN,
Registrar

A declaration by Mr. Thór Vilhjálmsson and, in accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 50 para. 2 of the Rules of Court, the following separate opinions are annexed to the present judgment:

- joint concurring opinion of Mr. Cremona and Mrs. Bindschedler-Robert;

- dissenting opinion of Mr. Liesch;

- partly dissenting opinion of Mr. Matscher;

- partly dissenting opinion of Mr. Pinheiro Farinha;

- partly dissenting opinion of Sir Vincent Evans.

G.W.
M.-A.E.

DECLARATION OF JUDGE THÓR VILHJÁLMSSON

My vote in this case reflects a change from my vote in the case of Le Compte, Van Leuven and De Meyere. This change is prompted by the majority decision in that case.

JOINT CONCURRING OPINION OF JUDGES CREMONA AND BINDSCHEDLER-ROBERT

We agree with all the conclusions reached in the operative part of the judgment.

Thus also in regard to Article 6 para. 1 (art. 6-1) of the Convention we, like the majority of our colleagues, have come to the conclusion that there is in this case in respect of both applicants a violation of that provision. But with regard to the applicability of that provision to the case we rely on grounds different from those relied upon by the majority. In fact, in the circumstances of the case, as in the analogous case of Le Compte, Van Leuven and De Meyere and for the reasons set out in our joint separate opinion annexed to the Court's judgment in that case, we find that the proceedings complained of by the applicants concerned not the determination of civil rights or obligations but, as explained in that opinion, the determination of a criminal charge, within the meaning of the said Article 6 (art. 6).

Finally, in order to avoid repetition, we deem it sufficient for the purposes of the present case to refer to that opinion.

DISSENTING OPINION OF JUDGE LIESCH

(Translation)

The Albert and Le Compte judgment confirms me in the dissenting opinion I expressed in the case of Le Compte, Van Leuven and De Meyere.

Article 6 para. 1 (art. 6-1) of the Convention is not applicable to disciplinary matters.

The sole object of disciplinary proceedings is to determine whether a rule of professional conduct may have been infringed. The dispute (contestation), the argument, is not a priori concerned with the right to continue the practice of medicine but only with the issue whether the behaviour of the medical practitioner is such as to entail a disciplinary sanction.

Within the framework of such a dispute there is no element of private law.

The misconception results from too wide an interpretation of the Ringeisen judgment of 16 July 1971.

The specific case is treated as a decision of principle and applied to circumstances of a different kind.

In point of fact, in that judgment the Court stated that "the French expression ‘contestations sur (des) droits et obligations de caractère civil’ covers all proceedings the result of which is decisive for private rights and obligations" and that "the English text, ‘determination of ... civil rights and obligations’, confirms this interpretation" (Series A no. 13).

To appreciate the scope of this principle, it is essential to read the above-quoted passage together with the final sub-paragraph of paragraph 94 where the Court applies its postulate to the specific facts of the case:

> "Although it was applying rules of administrative law, the Regional Commission’s decision was to be decisive for the relations in civil law (‘de caractère civil’) between Ringeisen and the Roth couple."

Whether the administrative decision was positive or negative - approval or rejection of the contract of sale -, it was bound, in either event, to have a direct, immediate effect on civil rights and obligations; in either event, the outcome of a civil right in issue depended upon the measure taken by the executive and administrative bodies.

The inescapable result of the decision was thus to confirm, modify or annul civil rights or obligations.

And the Court was able to state further that "the character of the legislation which governs how the matter is to be determined (civil, commercial, administrative law, etc.) and that of the authority which is invested with jurisdiction in the matter (ordinary court, administrative body, etc.) are therefore of little consequence".

This is not the position, however, in the present case.

The Provincial Council's decision was capable of being decisive for private-law relations, but it was not bound to be. The disciplinary proceedings in the instant case, unlike the administrative proceedings in the Ringeisen case, did not inevitably affect civil rights and obligations.

Had the Provincial Council merely imposed, for example, a reprimand in respect of the applicants, the outcome of the proceedings would not have been decisive, in that the right to practise would not have been directly in issue.

In my view, Article 6 para. 1 (art. 6-1) is not applicable to the present facts.

PARTLY DISSENTING OPINION OF JUDGE MATSCHER

(Translation)

In my partly dissenting opinion in the case of Le Compte, Van Leuven and De Meyere (judgment of 23 June 1981, Series A no. 43, pp. 34-38), I amply expounded the reasons that, to my regret, have led me to dissociate myself from the conclusions of the majority of my colleagues as regards the applicability of Article 6 para. 1 (art. 6-1) of the Convention to disciplinary cases in so far as such cases might come within the notion of civil law matters for the purposes of that Article (art. 6-1). The circumstances being essentially the same in the present case, I cannot but re-affirm my previous opinion, subject to recalling its basic features. Moreover, the majority in the present case has in substance confined itself to re-affirming the stance it adopted in the earlier case, without making the slightest attempt to discuss or, even less, refute the contrary arguments advanced against it.

I would observe in passing that with regard to the other issues raised by the present case, consistently with the position I took in the case of Le Compte, Van Leuven and De Meyere, I fully concur with the unanimous conclusions of the Court.

I likewise reiterate my regret that the Court has not judged it necessary to examine the case from the standpoint of criminal law.

The basic features of my dissenting opinion in the case of Le Compte, Van Leuven and De Meyere were the following:

1. The applicants' right to practise medicine was neither the object nor one of the objects of the disciplinary proceedings instituted against them before the jurisdictional organs of the Ordre and continued before the Court of Cassation. The exclusive object of those proceedings (as indeed of disciplinary proceedings in general) was to ascertain whether the applicants had broken the medical profession's rules of professional conduct and, if so, to impose on them the appropriate sanction. It was that sanction alone which, in the particular circumstances, affected their professional situation and which thereby had an indirect effect on the private-law relationships that the applicants might have established with their patients. But such relationships were not at all in issue in the relevant disciplinary proceedings.

Article 6 para. 1 (art. 6-1) of the Convention (under its "civil" head) only covers proceedings having as their object "contestations" (disputes) over "civil rights and obligations" ("all proceedings the result of which is decisive for private rights and obligations", to use the formula found in the Ringeisen judgment), whereas the mere fact that the outcome of proceedings might have an indirect effect on such a right does not suffice to bring those proceedings within the category of those contemplated by Article 6 para. 1 (art. 6-1).

2. Nor, in the instant case, was there a "contestation" (dispute) over a civil right. The Court's judgment leaves out of account the proceedings before the Provincial Council, which had imposed a specific sanction on the applicants, and considers the contestation (dispute) to have "arisen" as a result of the fact that the applicants challenged the first-instance decision by appealing against it (see paragraph 34, first sub-paragraph). Such reasoning is based on a complete misconception of the purpose of appeal proceedings. In point of fact, the object and nature of a case (or a contestation/dispute) do not change with the various levels of jurisdiction, independently of the arguments, grounds and claims put forward on appeal: if the proceedings before the Provincial Council did not have as their object the determination of a contestation (dispute) over civil rights and obligations, it could not be otherwise in regard to the proceedings before the Appeals Council and the Court of Cassation. In other words, the "contestation" (dispute) formed the object of those proceedings, or was irrelevant thereto, from the very outset; it could not "arise" (see paragraph 34, first sub-paragraph of the judgment) on appeal or during the cassation proceedings.

3. The judgment, in an endeavour to limit its scope, confines itself to holding that the right to exercise the medical profession as a doctor in private practice comes within the ambit of the rights protected by Article 6 para. 1 (art. 6-1). For my part, I do not see any rational possibility for distinguishing, in this respect, between the right to exercise the medical profession as a doctor in private practice and the right to exercise the profession as a civil servant in a public health service or as a salaried employee, and between the right to practise medicine in general and the right to exercise any other profession. If an assertion is true, it ought to be capable of generalisation, or, to be more precise, if my conclusion is correct, it ought to be valid not only for the particular case but also for all situations where the same basic premises exist.

The conclusion to be drawn could only be the following: the right to practise any profession whatsoever is included amongst the rights protected by Article 6 para. 1 (art. 6-1). Can the authors of the Convention really have framed Article 6 (art. 6) in such a way? I am inclined to believe that in making such an affirmation the Court is going beyond the limits of an "evolutive" interpretation of the Convention, which is especially appropriate when the Convention employs general and undefined terms (for example, "necessary in a democratic society") such as are capable of being interpreted in line with the evolution of social conceptions in the member countries.

Furthermore, the fact that the judgment holds back from clearly stating this conclusion - the only conclusion that appears consistent when reasoning from its basic premises - but prefers to leave the matter vague leads to legal uncertainty, which is especially serious in the face of situations and problems that are ever present in all the member States.

4. Finally, the result of the judgment is to find a breach because of the absence of publicity in the cases, cases where the procedural-guarantee purpose that Article 6 para. 1 (art. 6-1) serves in requiring public hearings and public pronouncement of judgment was in no way at stake (hence a finding of breach for a purely formal infringement of the provisions of Article 6 para. 1) (art. 6-1); this constitutes for me a further reason for asserting that Article 6 (art. 6) of the Convention does not apply to the cases in question.

PARTLY DISSENTING OPINION OF JUDGE PINHEIRO FARINHA

(Translation)

To my great regret, I cannot share the opinion which my colleagues forming the majority have expressed concerning Article 6 (art. 6) of the European Convention on Human Rights.

In fact:

1. The private-law relations established by Dr. Albert and Dr. Le Compte with their clients were not discussed before the disciplinary organs of the Ordre.

2. The contestation (dispute) before the disciplinary organs (Provincial and Appeals Councils) and then before the Court of Cassation bore solely on questions of professional conduct, and this is a matter that falls outside the ambit of civil law.

3. The applicants' case concerns exclusively the violation of the rules of professional conduct and it follows, in my judgment, that Article 6 para. 1 (art. 6-1) is inapplicable (as I have already stated in my separate opinion in the case of Le Compte, Van Leuven and De Meyere).

4. In conclusion, I consider that there has been no violation of Articles 3, 6 or 11 (art. 3, art. 6, art. 11) of the Convention.

PARTLY DISSENTING OPINION OF JUDGE SIR VINCENT EVANS

I agree with the judgment of the Court that there was no violation of Article 3 (art. 3) or of Article 11 (art. 11) of the Convention.

I regret, however, that I disagree with the conclusion of the majority of the Court that Article 6 (art. 6) was violated. For the reasons already stated in my dissenting opinion in the case of Le Compte, Van Leuven and De Meyere and which it is therefore unnecessary to repeat, it is my view that Article 6 (art. 6) is not applicable in the present case because the proceedings complained of by the applicants were not concerned with the determination either of civil rights or obligations or of a criminal charge within the meaning of Article 6 (art. 6).