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

SECOND SECTION

CASE OF CHEVROL v. FRANCE

(Application no. 49636/99)

JUDGMENT

STRASBOURG

13 February 2003

FINAL

13/05/2003

In the case of Chevrol v. France,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr A.B. BAKA, *President*,
Mr J.-P. COSTA,
Mr GAUKUR JÖRUNDSSON,
Mr L. LOUCAIDES,
Mr C. BÎRSAN,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI, *judges*,
and Mr T.L. EARLY, *Deputy Section Registrar*,

Having deliberated in private on 22 October 2002 and 28 January 2003,

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

PROCEDURE

1. The case originated in an application (no. 49636/99) against the French Republic lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a French national, Mrs Yamina Chevrol ("the applicant"), on 4 March 1996.

2. The applicant alleged, in particular, that the *Conseil d'Etat*'s referral to the Minister for Foreign Affairs of a preliminary question as to whether the condition of reciprocity had been satisfied in respect of an international treaty – a Government Declaration of 19 March 1962 forming part of the "Evian Accords" – and the fact that the minister's assessment was binding on the court and was not open to challenge by applicants amounted to interference by the executive which was incompatible with the notion of an independent "tribunal" with full jurisdiction as guaranteed by Article 6 § 1 of the Convention.

3. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

6. In a decision of 4 June 2002 the Chamber declared the application admissible and considered that a hearing on the merits was necessary.

7. On 17 October 2002, the Chamber asked the parties to reply during the hearing to further questions as to whether the applicant was a "victim" within the meaning of Article 34 of the Convention and whether Article 6 § 1 of the Convention was applicable to the proceedings in issue.

8. The hearing took place in public in the Human Rights Building, Strasbourg, on 22 October 2002 (Rule 59 § 2).

There appeared before the Court:

(a) *for the Government*
Mr A. BUCHET, Head of the Human Rights Section,
Legal Affairs Department, Ministry of Foreign Affairs, *Agent*,
Ms B. JARREAU, Administrative Court judge,
on secondment to the Human Rights Section,
Legal Affairs Department, Ministry of Foreign Affairs, *Counsel*;

(b) *for the applicant*
Mr B. TABAKA, knowledge manager specialising
in administrative law, Landwell & Partners, Paris, *Counsel*.

9. The applicant attended the hearing. The Court heard addresses by Mr Tabaka and Mr Buchet and also their replies to questions from its individual members.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. On 17 February 1987 the applicant, who had qualified as a doctor in Algeria in 1969 after graduating in medicine from the University of Algiers, applied to the Bouches-du-Rhône *département* council of the *ordre des médecins* (Medical Association) for registration as a member of the *ordre*.

11. The *département* council refused her application on the ground that, although she was French, she did not have a French medical qualification. The applicant subsequently made eleven unsuccessful applications to the

Minister for Health for authorisation under Article L. 356, point (2), third paragraph, of the Public Health Code.

12. On 1 June 1995 the applicant again applied to the *département* council, relying on the Government Declarations of 19 March 1962 on Algeria, known as the "Evian Accords", and in particular on the Government Declaration on Cultural Cooperation between France and Algeria ("the 1962 Government Declaration"), of which Article 5 of Part I provides:

> "Academic diplomas and qualifications obtained in Algeria and France under the same conditions as regards curriculum, attendance and examinations shall be automatically valid in both countries."

13. Her application was rejected on 16 June 1995 by the Bouches-du-Rhône *département* council of the *ordre des médecins*, which refused to register her.

14. The applicant appealed against that decision to the Provence-Alpes-Côte d'Azur-Corse regional council of the *ordre des médecins*. In a decision of 17 December 1995 the regional council upheld the decision to refuse her registration.

15. On 13 February 1996 the applicant applied to the disciplinary section of the National Council of the *ordre des médecins*. In a decision of 20 March 1996 the disciplinary section refused her application on the ground, *inter alia*, that the terms of Article 5 of the 1962 Government Declarations could not by themselves confer the right to practise medicine in France on all those who had obtained medical qualifications in Algeria after that date, and therefore could not be used in support of an application for registration.

16. On 3 June 1996 the applicant applied to the *Conseil d'Etat* for judicial review of that decision.

17. On 29 October 1998, at the request of the *Conseil d'Etat*, the Legal Affairs Department of the Ministry of Foreign Affairs submitted observations on the applicant's application. It stated:

> "This application calls for the following observations on my part, which, as you requested, concern the provisions of Article 5 of the Government Declaration of 19 March 1962 on Cultural Cooperation between France and Algeria, one of the declarations making up the 'Evian Accords'. ...
>
> 1. Nature of the provisions
>
> The *Conseil d'Etat*, acting in its judicial capacity, has already had occasion to rule on the nature of the provisions of the 'Evian Accords'. Agreeing with the Department's position, it held that the Accords constituted an international treaty (see the *Conseil d'Etat*'s *Moraly* judgment of 31 January 1969, *Recueil des arrêts du Conseil d'Etat* [Reports of the judgments of the *Conseil d'Etat*], 1969, p. 50).

2. Applicability of the provisions

The Government Declarations of 19 March 1962 were approved in a referendum held on 8 April 1962 and were subsequently published in the Official Gazette on 20 April 1962. They came into force on 3 July 1962 following an exchange of letters between the President of the French Republic and the Chairman of the Provisional Executive of the Algerian State.

Since no measures have been taken to suspend their application or to revise their content, the provisions in question must be regarded as having been in force on 17 December 1995 and 20 March 1996, when the impugned decisions ... were taken.

However, the reciprocity requirement in Article 55 of the Constitution cannot be regarded as having been satisfied at that time, since those provisions had not been applied by the Algerian authorities in respect of applications by French nationals with qualifications obtained in France. Consequently, they cannot be applied to the facts of the present case.

3. In the alternative, the scope of the provisions

Article 5 § 1 of the Declaration ... lays down the principle that French and Algerian qualifications are automatically equivalent, without there being any need for implementing regulations, provided that the curricula followed are similar.

Regard being had, in particular, to the precision of their content and the lack of any reference to implementing measures, the provisions in issue appear to be directly effective.

However, they cannot be regarded as establishing an unconditional right for anyone having obtained medical qualifications in Algeria to be registered as a member of the French *ordre des médecins*. In assessing candidates for registration as a member of the national *ordre*, reference should be made to the domestic legislation in force, in particular Articles L. 356 et seq. of the Public Health Code, the requirements of which, in the case of foreign nationals, go beyond the production of a French medical degree or a recognised equivalent qualification, as candidates must also undergo professional aptitude tests."

18. After being apprised of those observations, the applicant produced to the *Conseil d'Etat* declarations from various Algerian authorities certifying that qualifications obtained in France by French practitioners were recognised as being automatically valid in Algeria.

19. In a judgment of 9 April 1999 the *Conseil d'Etat*, acting in its judicial capacity, did not follow the submissions of the Government Commissioner, Mr Rémy Schwartz, and dismissed the application in the following terms:

"...

As regards the argument based on Article 5 of the Government Declaration of 19 March 1962 on Cultural Cooperation between France and Algeria:

...

Article 55 of the Constitution of 4 October 1958 provides: 'Treaties or agreements that have been lawfully ratified or approved shall, upon publication, prevail over Acts of Parliament, subject, in respect of each agreement or treaty, to its application by the other party.' It is not for the administrative courts to determine whether and to what extent the manner in which a treaty or agreement is applied by the other party is capable of depriving the instrument's provisions of the authority conferred on them by the Constitution. In observations produced on 2 November 1998 the Minister for Foreign Affairs stated that the aforementioned provisions of Article 5 of the Declaration on Cultural Cooperation between France and Algeria could not be regarded as having been in force on the date of the decision complained of, seeing that on that date the reciprocity requirement laid down in Article 55 of the Constitution had not been satisfied. [The applicant] is accordingly not entitled to rely on those provisions.

As regards the other arguments:

...

Although [the applicant] submits that the disciplinary section of the National Council of the *ordre des médecins* infringed the Council of the European Communities' Directive of 21 December 1988 on the recognition of diplomas, she has not produced any information from which it may be ascertained whether that argument is well-founded. The Council of the European Communities' Recommendation of 21 December 1988 does not impose on the member States any obligations on which [the applicant] could rely.

As [the applicant] was unable to show either that she had obtained the French qualification for practising as a doctor or any of the qualifications listed in Article L. 356-2 of the Public Health Code or that she had been granted the special ministerial authorisation provided for in Article L. 356 ... for persons with foreign qualifications, she could not expect to be registered. Consequently, her argument that the disciplinary section did not take into account her ability and her clinical and academic experience is irrelevant.

..."

20. In a ministerial order of 22 January 1999, published in the French Official Gazette on 30 January 1999, the applicant was authorised to practise as a doctor in France with effect from 1997, under Article L. 356, point (2), third paragraph, of the Public Health Code. On the basis of that order, in a decision of 12 April 1999, the Bouches-du-Rhône *département* council of the *ordre des médecins* registered the applicant as a member of the *ordre*. On 9 August 1999 it recognised the applicant's abilities as an orthopaedic surgeon by designating her as a doctor specialising in

orthopaedic surgery, on the basis of her qualifications and professional experience.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

Article 55 of the Constitution provides:

> "Treaties or agreements that have been lawfully ratified or approved shall, upon publication, prevail over Acts of Parliament, subject, in respect of each agreement or treaty, to its application by the other party."

B. The Public Health Code (as in force at the relevant time)

21. Anyone wishing to practise as a doctor in France must satisfy certain conditions laid down in Articles L. 356, L. 356-1 and L. 356-2 of the Public Health Code. The two fundamental requirements are possession of certain qualifications referred to in Article L. 356-2 or of a special status (Article L. 356, point (2), first and second paragraphs), and nationality (Article L. 356, point (2), second paragraph). A third condition is registration as a member of the *ordre des médecins* (Article L. 356, point (3)).

22. It follows from those provisions that anyone who has a "diploma, certificate or other qualification referred to in Article L. 356-2" and is a "French national or a national of one of the member States of the European Economic Community, of one of the other States Parties to the Agreement on the European Economic Area, of Morocco or of Tunisia ..." automatically qualifies for registration as a member of the *ordre*. Article L. 356-2 refers to the following qualifications for practising as a doctor: "either the French State degree of Doctor of Medicine ... or, if the person concerned is a national of a member State of the European Economic Community or of another State Party to the Agreement on the European Economic Area, a degree, certificate or other medical qualification issued by one of those States ...".

23. The Minister for Health may also, after obtaining the opinion of a committee, authorise other persons on an individual basis to practise medicine (Article L. 356, point (2), third paragraph), including French nationals who do not possess the qualifications referred to in Article L. 356-2. The maximum number of persons who may be granted such authorisation is set every year "by order of the Minister for Health, with the agreement of the aforementioned committee, regard being had to the arrangement under which they intend to practise".

C. Case-law concerning international treaties

1. The Conseil d'Etat*'s position*

24. For a long time the *Conseil d'Etat* regarded the interpretation of an international treaty containing ambiguous or unclear provisions as a matter outside its jurisdiction because it deemed such interpretation to be a prerogative act that could not be dissociated from international relations and was not open to challenge in the courts (a position maintained since *Veuve Murat, Comtesse de Lipona*, judgment of 23 July 1823, *Recueil des arrêts du Conseil d'Etat*, p. 45). When confronted with provisions that it considered insufficiently clear, it relied on the official interpretation given by the Minister for Foreign Affairs (see also *Karl et Toto Samé*, judgment of 3 July 1931, Sirey 1932, III, p. 129, together with the submissions of Mr Ettori and the commentary by Mr Rousseau). Since the *Conseil d'Etat*'s judgment of 29 June 1990 in *GISTI*, the practice of referring a preliminary question to the minister has been discontinued and the *Conseil d'Etat* now interprets international agreements itself; if it seeks the opinion of the executive, it does not regard itself as bound by it (see *GISTI*, judgment of 29 June 1990, *Recueil des arrêts du Conseil d'Etat*, p. 171, and the Court's judgment in *Beaumartin v. France* (24 November 1994, Series A no. 296-B) concerning a ruling given before the *Conseil d'Etat* had altered its position).

25. With regard to the Government Declarations of 19 March 1962, the *Conseil d'Etat* ruled in a judgment of 31 January 1969 (*Société Moraly et Société Maisons Moraly*, *Recueil Lebon*, p. 51) that they should be regarded as constituting an international treaty. It so held after referring a preliminary question to the Minister for Foreign Affairs as to the interpretation of the Declarations' scope. The *Conseil d'Etat* maintained that position even after discontinuing the practice of referring preliminary questions on the interpretation of an international treaty (see, for example, *Teytaud*, judgment of 25 November 1998, case no. 182302).

26. However, the change in position resulting from *GISTI* has not been transposed to the context of applying the reciprocity clause in Article 55 of the Constitution. The *Conseil d'Etat* has taken the view that it is not its task to assess whether and to what extent the manner in which a treaty or agreement is applied by the other party is capable of depriving the instrument's provisions of the authority conferred on them by the Constitution (see *Rekhou* and *ministre du Budget contre M*[me] *Veuve Bellil*, 29 May 1981, *Recueil Lebon*, p. 220, judgments of the full court, and *ministre du Budget contre Nguyen Van Giao*, judgment of 27 February 1987, *Recueil Lebon*, p. 77). Those judgments and the one in the instant case are the only ones in which the *Conseil d'Etat* has ruled on the manner in which the reciprocity clause is to be applied and on the continuation of

the practice of referring preliminary questions to the Minister for Foreign Affairs.

2. The Court of Cassation's position

27. When dealing with issues relating to reciprocity, the Court of Cassation initially adopted the same solution as that advocated by the *Conseil d'Etat* (Court of Cassation, Criminal Division, 29 June 1972, *Males*, *Bulletin criminel* no. 227). It subsequently held that in the absence of any measures by the government to denounce a treaty or suspend its application (such as publication in the Official Gazette of a memorandum by the Minister for Foreign Affairs), it was not for the courts to review compliance with the condition of reciprocity in inter-State relations as laid down in Article 55 of the Constitution (Court of Cassation, Civil Division (Cass. civ.) I, 6 March 1984, *Mme Kappy, épouse Lisak*, *Revue générale de droit international public* 1985, p. 538). That position has been maintained ever since (Cass. civ. I, 16 February 1994, *ordre des avocats près la cour d'appel de Paris contre Aït Kaci*, *Bulletin de la Cour de cassation* (*Bull. cass.*) no. 65, and Cass. civ. I, 23 March 1994, *N'Guyen Duy Thong contre Conseil de l'ordre des avocats de la Seine-Saint-Denis*, *Bull. cass.* no. 105).

THE LAW

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

28. Relying on Article 6 § 1 of the Convention, the applicant complained that her right to a fair hearing had been infringed on account of the interference by the executive with the *Conseil d'Etat*'s judicial powers. She argued that the minister's involvement had been decisive for the outcome of the legal proceedings and had not been open to challenge on her part.

29. The relevant parts of Article 6 § 1 of the Convention provide:

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

A. Whether the applicant can claim to be a "victim"

30. On 12 April 1999, three days after the *Conseil d'Etat* had given judgment, the Bouches-du-Rhône *département* council of the *ordre des médecins* registered the applicant as a member with effect from 1997, thereby entitling her to practise medicine in France. The first issue to be

considered, therefore, is whether the applicant is a "victim" within the meaning of Article 34 of the Convention.

31. The applicant maintained that she was still a "victim" of the alleged violation of the Convention. Relying on the Court's case-law (see *Lüdi v. Switzerland*, judgment of 15 June 1992, Series A no. 238, p. 18, § 34), she pointed out that a favourable decision or measure was not in principle sufficient to deprive applicants of their status as a "victim" unless the national authorities had acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention. In her submission, France had not afforded full redress for the consequences, particularly the financial ones, of the failure to recognise her medical qualifications. She stated that between 1 August 1986, the date on which she had arrived in France, and 1999 she had not been able to perform any surgery because she had not been authorised to practise. Even when she had obtained authorisation in 1999, her age (she was 57 years old at the time) and the fact that she had not practised for thirteen years had meant that she was unable to set up her own practice or join a team of surgeons. She had only been able to obtain a "possibly renewable" temporary contract which, in her opinion, was not commensurate with her professional abilities and references. She considered that her career had been brought to a standstill in 1986 and that her registration as a member of the *ordre* in 1999 had not redressed the situation. She added that her complaints concerned not only the fact that she had been unable to practise medicine, but also the fact that her case had been heard by a tribunal that had not been independent and impartial in that the assessment of a fundamental point of law had been referred to the Minister for Foreign Affairs. She accordingly considered that she could claim to be a "victim".

32. The Government disputed that argument. They submitted that, further to the ministerial order of 22 January 1999, the applicant had had the possibility of working as a doctor in private practice since 12 April 1999. As a result, the only adverse consequence mentioned by the applicant, namely her being unable to practise as a doctor, had ceased to exist on 12 April 1999.

33. The Government accordingly inferred that the ministerial order of 22 January 1999 satisfied the requirements of the Court's case-law concerning loss of victim status, although they were aware that the Court had a fairly broad conception of the notion of "victim" (see *Amuur v. France,* judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36, and *Association Ekin v. France*, no. 39288/98, §§ 37-38, ECHR 2001-VIII) and that it had difficulty in accepting that a person could cease to be a victim during the course of the proceedings. They argued that although the order in issue had not on the face of it had a direct link with the alleged violation since it had not concerned the requirements of a fair hearing, which the applicant alleged had been infringed, it had

nonetheless settled the dispute finally and unequivocally in the applicant's favour by authorising her to practise as a doctor.

34. The notion of victim should not, the Government added, be construed in a formalistic manner; the fundamental aim should be to ensure that, in substance, the alleged violation had genuinely and totally ceased to exist. That had been the case in this instance as the applicant had been authorised to practise as a doctor and did not risk having that entitlement challenged. She was therefore no longer suffering the adverse consequences of the domestic decision, and the dispute that had given rise to the proceedings whose fairness she was contesting had now been finally settled.

35. The Government argued that treating the applicant as a "victim" would amount to considering that a person could continue to complain of the unfairness of proceedings even if their outcome had been favourable. They submitted in conclusion that the applicant could not claim that she was still a "victim" since, although her application to the *Conseil d'Etat* had been dismissed on 9 April 1999, three days later she had been able to practise as a doctor and thus exercise the right she had claimed in that court.

36. The Court observes that it has repeatedly held that the word "victim" in the context of Article 34 of the Convention (Article 25 before 1 November 1998) "denotes the person directly affected by the act or omission in issue ...". Consequently, a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless "the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention" (see, among other authorities, *Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, pp. 30-32, §§ 66 and 69; *Inze v. Austria*, judgment of 28 October 1987, Series A no. 126, p. 16, § 32; *Association Ekin v. France* (dec.), no. 39288/98, 18 January 2000, and the judgment in the same case, cited above, §§ 37-38).

37. In so far as the applicant alleged a violation of Article 6 § 1 of the Convention, the Court must determine whether the national authorities acknowledged any such violation and, if so, afforded redress for it.

38. In the instant case the Court notes that from 17 February 1987 onwards the applicant sought permission to practise as a doctor in France, firstly from the council of the *ordre des médecins* and subsequently, on eleven occasions, from the Minister for Health. Concurrently, in 1995 the applicant instituted proceedings before the council of the *ordre* on the basis of Article 5 of the 1962 Government Declaration. The Court observes that the outcome of those proceedings was unfavourable to the applicant, since they ended when the *Conseil d'Etat* gave judgment on 9 April 1999, dismissing her application. The applicant's complaint before the Court concerns the alleged unfairness of those proceedings.

39. Following twelve refusals, the applicant was finally authorised to practise as a doctor by the ministerial order of 22 January 1999, with effect

from 1997. The order was made under Article L. 356, point (2), paragraph 3, of the Public Health Code, which provides for a procedure whereby certain persons who do not satisfy the usual requirements for practising medicine may be authorised on an individual basis to do so (see paragraphs 21-23 above).

40. The Court notes that the ministerial order was published in the Official Gazette (no. 25, 30 January 1999, p. 1582) in connection with notices of appointments. The order merely mentions the names of persons who have been authorised to practise medicine in France. As the order was made prior to the *Conseil d'Etat*'s judgment, it clearly could not have referred to the manner in which Article 6 § 1 of the Convention was applied in that judgment, or *a fortiori* have acknowledged, if appropriate, that there had been a violation of that provision. As to the fact that, on the basis of that order, the applicant was registered as a member of the *ordre* on 12 April 1999, three days after the *Conseil d'Etat*'s judgment, the *Conseil d'Etat* does not appear to have been influenced either way by the order. The Court lastly notes that, far from holding that it was not necessary to rule on the applicant's application, the *Conseil d'Etat* dismissed it on logical grounds, thereby indicating that the dispute had not been resolved in spite of the order of 22 January 1999.

41. It follows from the foregoing that none of the relevant authorities acknowledged explicitly, or even implicitly, that there had been a violation of Article 6 § 1 of the Convention. Furthermore, the fact that the applicant was authorised to practise medicine in France did not remove in substance the alleged unfairness of the proceedings in the *Conseil d'Etat* on account of the referral of a preliminary question to the Minister for Foreign Affairs.

42. The fact that the applicant was authorised to practise medicine in France may, at best, be deemed to constitute redress. However, the applicant did not receive such authorisation until 1999, with effect from 1997, whereas the proceedings complained of had been instituted in 1995. Consequently, even supposing that redress was afforded, it was only partial.

43. In short, as the national authorities did not acknowledge, either expressly or in substance, or afford full redress for, the violation alleged by the applicant, she may still claim to be a "victim" within the meaning of Article 34 of the Convention.

B. Applicability of Article 6 § 1 of the Convention

44. According to the Court's settled case-law, Article 6 § 1 of the Convention is applicable only if there is a genuine and serious dispute (see *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, p. 30, § 81) over "civil rights and obligations". The dispute may relate not only to the actual existence of a right but also to its scope and the manner of its exercise (see, among other authorities, *Zander v. Sweden,*

judgment of 25 November 1993, Series A no. 279-B, p. 38, § 22), and the outcome of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see, among other authorities, *Masson and Van Zon v. the Netherlands*, judgment of 28 September 1995, Series A no. 327-A, p. 17, § 44, and *Fayed v. the United Kingdom*, judgment of 21 September 1994, Series A no. 294-B, pp. 45-46, § 56). The Court must therefore determine whether Article 6 of the Convention applies to the proceedings instituted before the council of the *ordre* in 1995.

45. The applicant pointed out that the two fundamental requirements for practising medicine in France were, firstly, possession of certain qualifications or of a special status and, secondly, nationality (Article L. 356, point (2), first and second paragraphs, of the Public Health Code). She submitted that she had relied on Article 5 of the 1962 Government Declaration, which provided that academic diplomas and qualifications obtained in Algeria and France were automatically valid in both countries. Pursuant to that provision, she had been entitled to claim that she satisfied the two requirements laid down in the Public Health Code and, consequently, to practise as a doctor in France. Her position in the proceedings in issue could therefore not be compared with that examined in *Delord v. France* ((dec.), no. 63548/00, 25 April 2002), in which the applicant's application for registration had been based on Article L. 356, point (2), third paragraph. The applicant submitted in conclusion that Article 6 § 1 of the Convention was applicable in her case.

46. In the Government's submission, however, Article 6 of the Convention was not applicable to the proceedings instituted by the applicant in the administrative courts. They argued that in the instant case there had been neither a "*contestation*" (dispute) within the meaning of Article 6 § 1 nor a right which could be said, at least on arguable grounds, to be recognised in domestic law

47. In support of that argument they pointed out, in the first place, that, according to the Court's case-law (see *Van Marle v. the Netherlands,* judgment of 26 June 1986, Series A no. 101, pp. 11-12, §§ 32-38, and *San Juan v. France* (dec.), no. 43956/98, ECHR 2002-III), proceedings for admission to a profession were not covered by Article 6 where they entailed an assessment of the knowledge and experience required for carrying on the profession. The Government argued that that position could be transposed to the instant case since, even if the dispute had not directly concerned the assessment of the applicant's knowledge, it had concerned academic qualifications. If the Franco-Algerian accord had been held to be applicable, it would have triggered an assessment of the conditions in which the applicant had obtained her qualifications. An issue of that kind could not, the Government submitted, form the basis of a "*contestation*" within the meaning of Article 6 § 1 of the Convention.

48. Secondly, the Government observed that the dispute concerned the validity of a university degree, which was one of the prerequisites for practising as a doctor in France. In the Government's submission, the right to practise medicine in France was not a right which could be said, on arguable grounds, to be recognised in domestic law. They observed that in a case very similar to the present one (see *Delord*, cited above), the Court had held that the applicant could not claim a right to practise as a doctor in France. The Government acknowledged that, unlike the instant case, that case had been based on Article L. 356, point (2), third paragraph, of the Public Health Code and not on Article 5 of the 1962 Government Declaration. They nevertheless maintained that the case was transposable to the instant one. If the 1962 Government Declaration had been applicable, it would not have conferred on the applicant a right to practise medicine. She would have remained subject to the individual ministerial authorisation procedure, which operated on the basis of a quota fixed annually. It followed, in the Government's submission, that, as in the *Delord* case, Article 6 of the Convention did not apply in the instant case.

49. The Court reiterates that, according to its case-law, “Article 6 § 1 extends to '*contestations*' (disputes) over (civil) 'rights' which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether they are also protected under the Convention” (see, among other authorities, *Editions Périscope v. France*, judgment of 26 March 1992, Series A no 234-B, p. 64, § 35, and *Zander*, cited above). Furthermore, “where legislation lays down conditions for the admission to a profession and a candidate for admission satisfies those conditions, he has a right to be admitted to that profession” (see *De Moor v. Belgium*, judgment of 23 June 1994, Series A no. 292-A, p. 15, § 43).

50. The Court notes at the outset that the dispute did not in any way concern an assessment of whether the applicant had the necessary knowledge and experience to practise as a doctor, and her qualifications were, moreover, not disputed by the Government. The disagreement related to the application of Article 5 of the 1962 Government Declaration.

51. The Court notes that the applicant was demanding access to the medical profession in accordance with the conditions laid down in Article L. 356, points (1) and (2), of the Public Health Code and that the disagreement does indeed concern the application of Article 5 of the Government Declaration of 19 March 1962 on Cultural Cooperation between France and Algeria, which, like all international treaties or agreements, is subject to a reciprocity requirement in France.

52. Under the provisions of the Public Health Code, access to the medical profession in France is subject to two requirements: possession of certain degrees or other qualifications, and nationality (Article L. 356, points (1) and (2), first paragraph). Persons satisfying both those requirements qualify directly for registration as members of the *ordre des*

médecins and are entitled to practise medicine in France (Article L. 356, point (3)); there is no upper limit on the number of registrations.

53. Furthermore, Article L. 356, point (2), third paragraph, of the Public Health Code provides that the Minister for Health may, on an individual basis and subject to an annual limit, authorise practitioners who do not satisfy the statutory nationality and qualification requirements to practise medicine. This is indisputably a special procedure distinct from the preceding one.

54. Following a number of unsuccessful applications, the applicant tried a different approach in 1995, not relying on Article L. 356, point (2), third paragraph, but arguing that, pursuant to Article 5 of the 1962 Government Declaration, she satisfied the requirements for direct registration as a member of the *ordre*. Having satisfied the nationality requirement, she maintained that she would also satisfy the second requirement if her qualification were recognised as equivalent on the basis of an international treaty.

55. The Court notes that, as the 1962 Government Declaration is to be regarded as an international treaty according to the *Conseil d'Etat*'s case-law (see paragraph 25 above), its provisions in principle prevail over domestic legislation. It follows that the applicant could reasonably argue that if Article 5 of the 1962 Government Declaration had been regarded as being in force, the degree she had obtained in Algeria in 1969 should have been recognised as being automatically valid in France, thus enabling her to satisfy the qualification requirement laid down in the Public Health Code. She would then have been entitled to be registered directly as a member of the *ordre* and to practise medicine in France. In those circumstances, and having regard to the wording of Article L. 356 of the Public Health Code, the Court considers that the applicant could claim on arguable grounds that French law afforded her the right to be registered as a member of the *ordre des médecins* and hence to practise medicine in France.

56. Consequently, Article 6 § 1 of the Convention is applicable.

C. Compliance with Article 6 § 1 of the Convention

57. The applicant noted that the facts of the instant case were similar to those in *Beaumartin*, cited above. The *Conseil d'Etat* had asked the Minister for Foreign Affairs to give a unilateral opinion not open to challenge on the applicability of an international treaty in France. It had done so despite the fact that the issue of the application of the "Evian Accords" had been decisive for the outcome of the legal proceedings.

58. In the applicant's submission, the *Conseil d'Etat*'s continuing practice of referring preliminary questions to the minister was a traditional arrangement which was no longer appropriate today. She contended that a distinction should be made between prerogative acts, which were not

subject to judicial review, and other measures having a bearing on international relations, which fell outside the scope of prerogative acts and were to be classified as decisions open to challenge. Such measures included, for example, extradition decisions relating to the residence of aliens, in which the administrative courts were intervening more and more and were thus being required to assess the conduct of foreign States. They also included the assessment of the applicability of international treaties within the territory of France. In the current legal context, a decision not to recognise the applicability of an international treaty could no longer be taken unilaterally and in isolation, in the applicant's submission, without regard to the conventions and rules governing the international community. Such an assessment was a judicial rather than a merely political matter and should thus be the task of the courts.

59. Furthermore, the applicant argued, the fact that the Minister for Foreign Affairs' assessment as to whether the international treaty in question had been applied was binding on the court, which drew automatic inferences from it, was incompatible with judicial independence. Such a system meant that the minister was at once a party to the proceedings and the decision-making authority. That had been true in the applicant's case in that, although her dispute had not been directly with the Minister for Foreign Affairs but with the Minister for Health, that difference was irrelevant because the Minister for Foreign Affairs had been asked to give his opinion on a legal situation that involved the entire government.

60. In the applicant's submission, her right to a "tribunal" within the meaning of Article 6 § 1 of the Convention had been infringed in that she had not had access to an authority with jurisdiction to examine all questions of fact and law relevant to the dispute. She pointed out that she had attempted to produce various pieces of evidence to show that the "Evian Accords" had been applied by the Algerian government. However, that evidence had not been taken into account. She emphasised that as soon as she had had knowledge of the Minister for Foreign Affairs' observations, she had produced to the *Conseil d'Etat* several declarations from Algerian ministries recognising the equivalence of qualifications and confirming that the Doctor of Medicine degree awarded by French universities was equivalent to that awarded by Algerian universities. In support of her argument that the reciprocity requirement had been satisfied, she had also cited twenty-seven orders made by the French Ministry of Education between 1963 and 1973 – ten of which concerned medical degrees – in which 843 degrees or other qualifications awarded by the University of Algiers for the 1962/63 and 1971/72 academic years had been recognised as being automatically valid within French territory, pursuant to the Government Declarations of 19 March 1962 on Algeria. In the applicant's submission, there had been a need for a discussion of this evidence, which could have led to a different outcome.

61. Lastly, the applicant considered that the position adopted in *Beaumartin*, cited above, should be extended to the examination of the reciprocity of an international treaty. She observed in that connection that judicial functions necessarily included determining the rules applicable to a particular dispute. It was for the courts to identify the body of legal provisions that would apply in a particular case. That meant that they would be required to apply rules of both domestic and international law. Adjudication entailed assessing, above all, the evidence adduced by the parties, but also all the other circumstances of the case and, in particular, the applicable rules. Thus, if the court needed to have recourse to the Minister for Foreign Affairs, it was under an obligation to make an assessment of the reply it received and could not consider itself to be bound by the reply given by the executive when the outcome of the case might depend on it. Otherwise, the court would not be assessing the factual and legal issues before it and therefore did not have full jurisdiction. Although it was entitled to have recourse to the Minister for Foreign Affairs, in rather the same way as it might have recourse to an expert, it should not in any circumstances refrain from examining the minister's clarifications. In relieving itself of its duties, as it had done, by referring a preliminary question, the *Conseil d'Etat* was declining full jurisdiction and was no longer, in the applicant's submission, an independent and impartial tribunal within the meaning of the Convention.

62. Relying on *Beaumartin*, cited above, the Government noted that the Court had held that, in order to satisfy the requirements of Article 6 § 1 of the Convention, a court had to have full jurisdiction and be independent of the parties to the proceedings and the executive.

63. The principle that a court should exercise full jurisdiction required it not to abandon any of the elements of its judicial function. The court's independence from the parties and the executive meant that, where it was dealing with a dispute that came within its jurisdiction, it could not have the solution dictated to it by one of the parties or by a representative of the executive. According to the Court's conclusion in *Beaumartin*, matters concerning the interpretation of rules of international law came within the courts' jurisdiction. The point in issue, therefore, was whether the court's full exercise of its jurisdiction also required it to examine whether international agreements had been applied on a reciprocal basis.

64. In the instant case the Government identified two questions to be resolved:

(1) Was the assessment of a foreign State's application of an international agreement an essential component of the judicial function? And

(2) Could the courts legitimately rely on a government representative's assessment of that precise issue?

65. In the Government's submission, the assessment of the reciprocity requirement in Article 55 of the Constitution could not be regarded as a natural component of the judicial function. They maintained that the applicant's argument was based on the application to her case of the Court's conclusion in *Beaumartin* but was flawed because the task of interpreting a rule of international law could not be equated to the assessment of whether the reciprocity requirement had been satisfied. It did not belong to the normal functions of a court.

66. Admittedly, interpreting legal rules was one of the fundamental tasks of a court, which it could not abandon without “mutilating” its judicial function. There was no practical reason why a court should not interpret a rule of international law, since interpretation was an intellectual process for which it was just as well qualified as the administrative authority that had negotiated the international undertaking in question. The court's technical expertise in the matter could not be taken to be inferior to that of the administrative authority and the latter could, where necessary, inform the court of what the parties' intentions had been when the international undertaking had been negotiated and concluded.

67. That was not so, the Government submitted, when it came to assessing the reciprocity requirement in Article 55 of the Constitution. Such an assessment entailed examining retrospectively whether or not an international undertaking had been applicable, on the basis of information about a foreign State's conduct. A process of that kind was alien to the normal role of a court for several reasons.

68. Firstly, regard should be had to the nature of a process that consisted in passing judgment on a foreign State's conduct. The French courts exercised jurisdiction in respect of foreign authorities only in exceptional cases concerning issues of territorial jurisdiction. The courts, moreover, deliberately limited their review of measures which they considered indissociable from the conduct of international relations (see *Association Greenpeace – France*, judgment of 29 September 1995, *Conseil d'Etat*, full court, *Recueil des arrêts du Conseil d'Etat*, p. 347). In that context, the Government considered that the assessment of the conduct of a foreign State was more naturally a task for the diplomatic authorities than for the courts.

69. Secondly, the particular feature of the assessment of reciprocity was that its effects were comparable to those produced by the unilateral suspension of an undertaking. Where the minister concluded that an international treaty had not been applied by another party at the material time, this resulted in the treaty's being regarded retrospectively as having been inapplicable at that time. The validity of the international undertaking entered into by the French State was therefore called into question, in the same way as if the French authorities had unilaterally decided to suspend it. This undoubtedly had a direct impact on France's foreign policy. The State in question could challenge the interpretation of its conduct and envisage

retaliatory measures. In terms of its effects, therefore, the assessment of reciprocity also fell within the sphere of diplomatic relations. Furthermore, the reason why the administrative courts refused to deal with such questions, in the Government's submission, was that they considered that they would otherwise be infringing the principle of the separation of powers. A State's foreign policy manifestly fell within the province of its sovereign powers and fundamental prerogatives, which were outside the scope of Article 6 of the Convention.

70. The Government added that the court would no doubt have considerable practical difficulties in gathering reliable information itself, whereas the Minister for Foreign Affairs appeared better placed to do so by making use of the diplomatic network at his disposal. Furthermore, the current system of referring questions to the minister made it possible to obtain a reply quickly and to avoid discrepancies between different courts' interpretations of the same question, which would be particularly undesirable in such matters.

71. Lastly, the Government submitted that the parallel drawn by the applicant with proceedings concerning aliens was not persuasive, since such proceedings, which were a fundamental aspect of international human rights law, did not require reciprocity and entailed a full judicial review. In those proceedings, the courts dealt merely with individual cases that did not fundamentally call into question France's diplomatic relations, unlike in the case of a decision on a foreign State's application of an agreement of general scope.

72. Seeing that the assessment of the reciprocity requirement was outside the courts' ordinary jurisdiction, the fact that the courts relied on the minister's assessment on that point could not be considered contrary to Article 6 § 1 of the Convention. The Government therefore argued that the second question should be replied to in the affirmative.

73. Although the Court's case-law required the courts to be independent of the executive in discharging their normal duties, it did not require their power of review to extend to aspects of the case that were outside their jurisdiction. Contrary to the position in *Beaumartin*, the *Conseil d'Etat* had not had to find a solution to a “legal problem” before it in the instant case. It had exercised full jurisdiction in respect of the other points in dispute in the case before it. For that reason, the Government considered that the precedent established in *Beaumartin*, cited above, could certainly not be applied to the instant case.

74. Even supposing that the Court were to find that the referral of a preliminary question to the Minister for Foreign Affairs amounted to a restriction of the right of access to a court, the Government submitted that that practice pursued a legitimate aim, that of ensuring compliance with the principle of the separation of powers, which was essential to the functioning of a democracy and could not be called into question.

75. The Government submitted in conclusion that the fact that the *Conseil d'Etat* had relied on the Minister for Foreign Affairs' assessment of the reciprocity requirement in Article 55 of the Constitution could not amount to a violation of Article 6 § 1 of the Convention.

76. The Court reiterates at the outset that only an institution that has full jurisdiction and satisfies a number of requirements, such as independence of the executive and also of the parties, merits the designation "tribunal" within the meaning of Article 6 § 1 (see, among other authorities, *Ringeisen v. Austria*, judgment of 16 July 1971, Series A no. 13, p. 39, § 95; *Le Compte, Van Leuven and De Meyere v. Belgium*, judgment of 23 June 1981, Series A no. 43, p. 24, § 55; *Belilos v. Switzerland*, judgment of 29 April 1988, Series A no. 132, p. 29, § 64; and, above all, *Beaumartin*, cited above, pp. 62-63, §§ 38-39).

77. It further reiterates that for the determination of civil rights and obligations by a "tribunal" to satisfy Article 6 § 1, the "tribunal" in question must have jurisdiction to examine all questions of fact and law relevant to the dispute before it (see, *inter alia* and *mutatis mutandis*, *Le Compte, Van Leuven and De Meyere*, cited above, p. 23, § 51 (b); *Fischer v. Austria*, judgment of 26 April 1995, Series A no. 312, p. 17, § 29; and *Terra Woningen B.V. v. the Netherlands*, judgment of 17 December 1996, *Reports* 1996-VI, pp. 2122-23, § 52).

78. The Court observes that the *Conseil d'Etat*'s practice of referring preliminary questions for interpretation means that, when the administrative court is called upon to give a ruling on the conditions governing the application of the reciprocity clause in Article 55 of the French Constitution, it is obliged to ask the Minister for Foreign Affairs to clarify whether the treaty in issue has been applied on a reciprocal basis and to draw the necessary consequences, and it must then abide by his interpretation in all circumstances. The Government conceded this.

79. It observes that although, following a change in the case-law, that practice is no longer employed in the interpretation of international treaties (see paragraph 24 above), it is still used where the reciprocity clause is concerned.

80. The Court accepts that the application to the instant case of its conclusion in *Beaumartin*, as called for by the applicant, is by no means automatic, since the assessment of the applicability of treaties is different from the interpretation of treaties, being, in particular, more of a factual than a purely legal nature. The Court considers it beyond doubt that, in order to determine whether or not, in a particular case, the treaty has been applied by the other contracting State, the courts may be required to consult the Ministry of Foreign Affairs, which, by its very nature, will be likely to possess information about that State's application of the treaty.

81. However, the Court notes that in the instant case the *Conseil d'Etat*, in accordance with its own case-law, relied entirely on a representative of

the executive for a solution to the problem before it, concerning the applicability of treaties. It dismissed the applicant's application purely on the ground that the Minister for Foreign Affairs had stated that Article 5 of the 1962 Government Declaration could not be regarded as having been in force on the relevant date, as it had not been applied by Algeria. However, even if consultation of the minister by the *Conseil d'Etat* may appear necessary in order to assess whether the reciprocity requirement has been satisfied, that court's current practice of referring a preliminary question for interpretation, as in the instant case, obliges it to abide by the opinion of the minister – an external authority who is also a representative of the executive – without subjecting that opinion to any criticism or discussion by the parties.

82. The Court observes, in addition, that the minister's involvement, which was decisive for the outcome of the legal proceedings, was not open to challenge by the applicant, who was, moreover, not afforded any opportunity to give her opinion on the use of the referral procedure or the wording of the question, or to have the basis of her own reply to the question examined, or to submit a reply to the minister, which might have been helpful or even decisive in the eyes of the court. In fact, when the applicant was apprised of the Minister for Foreign Affairs' observations, she produced to the *Conseil d'Etat* several pieces of factual evidence to show that the 1962 Government Declaration had indeed been applied by the Algerian government. These included statements from Algerian ministries certifying that medical qualifications obtained in France were recognised as being equivalent in Algeria. However, the *Conseil d'Etat* did not even consider that evidence and was therefore unwilling to assess whether it was well-founded. That is clear from the judgment delivered on 9 April 1999, in which the *Conseil d'Etat* held that it was not its task to assess whether Algeria had implemented the 1962 Government Declaration or to draw its own inferences in the event that the declaration had not been applied; it based its decision solely on the opinion of the Minister for Foreign Affairs. In so doing, the *Conseil d'Etat* considered itself to be bound by the opinion, thereby voluntarily depriving itself of the power to examine and take into account factual evidence that could have been crucial for the practical resolution of the dispute before it.

83. That being so, the applicant cannot be considered to have had access to a tribunal which had, or had accepted, sufficient jurisdiction to examine all the factual and legal issues relevant to the determination of the dispute (see, among other authorities, *Terra Woningen B.V.*, cited above, p. 2123, § 54).

84. There has accordingly been a violation of Article 6 § 1 of the Convention in that the applicant's case was not heard by a "tribunal" with full jurisdiction.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. Article 41 of the Convention provides:

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

A. Damage

86. Before the Court, the applicant sought an award of 3,338,494 euros (EUR), corresponding to the total income which, in her submission, she had been unable to receive between 1987 and 2001 on account of the *Conseil d'Etat*'s failure to accept full jurisdiction. She also claimed EUR 100,000 in respect of the non-pecuniary damage resulting from the dispute, which had lasted more than ten years, and from the fact that she had been prohibited from practising her profession from 1987 to 1999 and had therefore had her career destroyed. She added that she had also sustained non-pecuniary damage in that it had been impossible for her to assert her rights because she had not been allowed to adduce evidence of the reciprocal application of the "Evian Accords".

87. The Government argued that her claims were manifestly excessive for two reasons. Firstly, they pointed out that, as was clear from its case-law (see *Beaumartin*, cited above, p. 64, § 44), the Court could not speculate as to the conclusions which the *Conseil d'Etat* would have reached if it had not sought an assessment by the Minister for Foreign Affairs as to whether Article 5 of the 1962 Government Declaration satisfied the reciprocity requirement. As in *Beaumartin*, although the applicant was seeking compensation for loss of opportunity, the Court should, in the Government's submission, make an award in respect of non-pecuniary damage only. Secondly, the Government observed that the applicant's claims for damages covered the period from 1987 to 2001, whereas she had not relied on the 1962 Government Declaration until 1995 and had been authorised to practise as a doctor from 12 April 1999 onwards. The Government considered that an award of EUR 17,000 would make good the non-pecuniary damage sustained by the applicant.

88. The Court notes at the outset that, as the Government submitted, it was not until 1995 that the applicant relied on the 1962 Government Declaration. Moreover, she was authorised to practise as a doctor in 1999. Even taking into account the applicant's difficulties since 1999 in finding employment at a level commensurate with her qualifications, the Court finds that only a period of approximately four years may be taken into consideration.

89. In any event, the Court cannot speculate as to the conclusions which the *Conseil d'Etat* would have reached if it had not based its decision solely on the minister's interpretation of the reciprocity requirement in relation to Article 5 of the Government Declaration of 19 March 1962 on Cultural Cooperation between France and Algeria. It considers, however, that the applicant must have suffered non-pecuniary damage, for which the finding of a violation in this judgment does not constitute sufficient reparation. Observing that the sum proposed by the Government under this head is reasonable, the Court, ruling on an equitable basis, awards the applicant EUR 17,000 for non-pecuniary damage.

B. Costs and expenses

90. The applicant did not make a claim in respect of costs and expenses. The Court sees no particular reason to order the State to award her anything under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Holds* by six votes to one that the applicant can claim to be a "victim" within the meaning of Article 34 of the Convention;

2. *Holds* by six votes to one that Article 6 § 1 of the Convention is applicable in the instant case;

3. *Holds* by six votes to one that there has been a violation of Article 6 § 1 of the Convention in that the applicant's case was not heard by a "tribunal" having full jurisdiction;

4. *Holds* by six votes to one
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 17,000 (seventeen thousand euros) in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate

equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in French, and notified in writing on 13 February 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence EARLY	András BAKA
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Mrs Mularoni is annexed to this judgment.

A.B.B.
T.L.E.

DISSENTING OPINION OF JUDGE MULARONI

(Translation)

I am unable to agree with the conclusions reached by my colleagues in the present case.

1. Whether the applicant is a "victim"

Mrs Chevrol, a French national, qualified as a doctor in Algeria in 1969 after graduating in medicine from the University of Algiers. On 17 February 1987 she applied for the first time to the Bouches-du-Rhône *département* council of the *ordre des médecins* for registration as a member of the *ordre*.

The *département* council refused her application on the ground that, although she was French, she did not have the appropriate French medical qualification and was therefore required to apply under Article L. 356, point (2), of the Public Health Code (in force until 22 June 2000), which provided that the Minister for Health could, on an individual basis and subject to an annual limit, authorise practitioners who did not satisfy the statutory nationality and qualification requirements to practise medicine. The applicant made some ten unsuccessful applications to the Minister for Health for such authorisation.

On 1 June 1995 the applicant submitted a further application to the *département* council, relying *for the first time* on the Government Declarations of 19 March 1962 on Algeria (the "Evian Accords"), and, in particular, on the Government Declaration on Cultural Cooperation between France and Algeria, of which Article 5 of Part I provides: "Academic diplomas and qualifications obtained in Algeria and France under the same conditions as regards curriculum, attendance and examinations shall be automatically valid in both countries." Her application was refused on 16 June 1995. On 13 February 1996 the applicant applied to the disciplinary section of the National Council of the *ordre des médecins*, asking it to set aside the decision of 17 December 1995 in which the Provence-Alpes-Côte d'Azur-Corse regional council had rejected her application to set aside the Bouches-du-Rhône *département* council's refusal to register her. In a decision of 20 March 1996 the disciplinary section of the National Council of the *ordre des médecins* refused her application. On 3 June 1996 the applicant applied to the *Conseil d'Etat* for judicial review of that decision. In a judgment of 9 April 1999 the *Conseil d'Etat* refused the application, considering itself to be bound by the declaration of the Minister for Foreign Affairs to the effect that the provisions of Article 5 of the "Evian Accords" could not be regarded as having been in force on the date of the decision complained of, seeing that on that date the reciprocity requirement in Article 55 of the Constitution had not been satisfied and that, accordingly, the applicant was not entitled to rely on those provisions.

In the meantime, in a ministerial order of *22 January 1999* (published in the French Official Gazette on 30 January 1999) the applicant had been authorised to practise as a doctor in France, pursuant to Article L. 356, point (2), of the Public Health Code. She applied to the Bouches-du-Rhône *département* council of the *ordre des médecins* for registration as a member of the *ordre*. In a decision of 12 April 1999 the Bouches-du-Rhône *département* council registered the applicant. On 9 August 1999 the same body recognised the applicant's abilities as an orthopaedic surgeon by designating her as a doctor specialising in orthopaedic surgery, on the basis of her qualifications and professional experience.

By January 1999, and hence before the *Conseil d'Etat* had given judgment (on 9 April 1999), the applicant had obtained satisfaction, and from that point onwards, in my opinion, she had no further cause of action, having resolved the matter at domestic level.

I consider that she was never a "victim" within the meaning of Article 34 of the Convention, as her case was settled at national level before she had exhausted domestic remedies; at the time when she lodged her application with the Commission (4 March 1996), she had not exhausted domestic remedies, and by the time the application was registered (24 June 1999), she was no longer a "victim".

I am aware of the Court's case-law to the effect that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, among other authorities, *Lüdi v. Switzerland*, judgment of 15 June 1992, Series A no. 238, p. 18, § 34).

However, I consider that that case-law does not apply in the instant case, in which the applicant, relying on Article 6 § 1 of the Convention, complained of a violation of her right to a fair hearing.

I would observe that in cases concerning, for example, the unfairness of criminal proceedings following which the applicant is nonetheless acquitted, the terms used by the Court to reject the application are usually the following: "The Court reiterates that an applicant who is acquitted or is not committed for trial can no longer claim to be a 'victim', within the meaning of Article 34 of the Convention, on account of the unfairness of the proceedings."

In civil proceedings, I would also note, for example, that where an applicant, after lodging his application with the Court, is refunded an amount determined by the national courts, the Court will simply dismiss complaints under Article 6 § 1 of the Convention on the ground that the applicant is no longer a "victim", referring to its settled case-law to the effect that an applicant who obtains redress at domestic level for the alleged violation can no longer claim to be a "victim" of a violation of the rights set forth in the Convention.

I consider that the Court should have adopted a similar approach in this case.

In my opinion, the Court's concern has always been to ensure that, in substance, the alleged violation has genuinely and totally ceased to exist and that there is no danger of its recurring (for the applicant, of course). In the instant case, the applicant was authorised to practise as a doctor. She was no longer adversely affected by the domestic decision complained of.

In my opinion, therefore, the applicant is not a "victim" within the meaning of the Convention.

2. Applicability of Article 6 § 1 of the Convention

The case concerns proceedings for registration as a member of the *ordre des médecins*.

The Court's recent inadmissibility decision of 25 April 2002 in *Delord v. France* (application no. 63548/00) related to Article L. 356, point (2), third paragraph, of the Public Health Code referred to above, which provided that the Minister for Health could, on an individual basis and subject to an annual limit, authorise practitioners who did not satisfy the statutory nationality and qualification requirements to practise medicine. The Court considered that Mrs Delord could not claim a right to practise as a doctor in France.

Admittedly, Mrs Delord's application was not based on Article 5 of the 1962 Government Declaration, but I wonder whether the present case merited a different conclusion as to the applicability of Article 6 § 1 of the Convention.

It seems to me that the Court has hitherto always maintained that initial registration as a member of the *ordre* is not a right guaranteed by the Convention and has accordingly found Article 6 § 1 of the Convention to be inapplicable to disputes of this kind.

It also seems to me that in such cases the Court has never made a distinction between the nature of the authorities (judicial or otherwise) called upon to determine the matter at domestic level. In the recent inadmissibility decision of 28 February 2002 in *San Juan v. France* ((dec.), no. 43956/98, ECHR 2002-III), which reaffirmed the position adopted in *Van Marle and Others v. the Netherlands* (judgment of 26 June 1986, Series A no. 101), the Court held that "the question whether the Board of Appeal ruled on matters susceptible to judicial assessment was decisive for the applicability of Article 6 § 1, irrespective of whether the Board itself had judicial status". It concluded: "An assessment of this kind, evaluating knowledge and experience for carrying on a profession under a particular title, is akin to a school or university examination and is so far removed from the exercise of the normal judicial function that the safeguards in Article 6 cannot be taken to cover resultant disagreements."

It is true that in *De Moor v. Belgium* (judgment of 23 June 1994, Series A no. 292-A) the Court held that Article 6 § 1 was applicable and had been infringed, observing: "Where legislation lays down conditions for the admission to a profession and a candidate for admission satisfies those conditions, he has a right to be admitted to that profession." But that case concerned a Belgian applicant who had obtained a law degree in Belgium and was applying for enrolment on the list of pupil advocates in Hasselt (Belgium), having obtained a favourable opinion from the Chairman of the National Bar Association.

I wonder whether it is desirable to extend that approach to the present case, bearing in mind, firstly, the fact that the applicant did not have a French qualification, and, secondly, the wording of Article 5 of Part I of the "Evian Accords", which provides: "Academic diplomas and qualifications obtained in Algeria and France under the same conditions as regards curriculum, attendance and examinations shall be automatically valid in both countries." One very important requirement must first be verified for each qualification, namely whether the conditions were the same in terms of curriculum, attendance and examinations, and authorisation must then be obtained from the minister, subject to an annual quota, in accordance with the procedure laid down in Article L. 356, point (2), of the Public Health Code. That interpretation follows from the wording of Article L. 356, point (2); it was confirmed at the hearing by the Government's representative and was not contested by the applicant. It therefore seems to me that the circumstances of the present case are not very different from those in *Delord*.

I consider that Mrs Chevrol did not have a genuine civil right protected by the Convention, in the sense that the recognition of diplomas and qualifications obtained abroad and, consequently, the right to practise medicine in France remained subject to conditions. I feel that extending the applicability of Article 6 § 1 to this case amounts in fact to acknowledging that the Court has jurisdiction to deal with the highly sensitive issue of the refusal by a State Party to the Convention to recognise any professional qualifications and diplomas obtained in another country, irrespective of whether that country is a party to the Convention.

I therefore consider that Article 6 § 1 is not applicable in the present case.

3. The merits

I am unable to agree with my colleagues' findings on the merits either.

Admittedly, the question of interpreting treaties does appear to have evolved over the years (in the past, this was the task of the political authorities, not only in France, until the *Conseil d'Etat*'s *GISTI* judgment of 29 June 1990, but in almost every country; the matter formed the subject of the Court's *Beaumartin v. France* judgment of 24 November 1994, Series A no. 296-B). I can understand that, in the light of such developments, it might

be felt that the time has come to hold that even the referral of a preliminary question to the Minister for Foreign Affairs for an assessment of reciprocity in respect of the other contracting party, the minister's reply being binding on the judge dealing with the case, is in breach of Article 6 of the Convention.

However, I consider that approach inappropriate for the following reasons.

Article 55 of the French Constitution provides that treaties or agreements that have been lawfully ratified or approved are, upon publication, to prevail over Acts of Parliament, "subject ... to [their] application by the other party". To assess whether the reciprocity requirement has been satisfied and to draw the necessary inferences, the court submits a preliminary question to the Minister for Foreign Affairs. It is bound by the minister's reply.

The practice of referring preliminary questions is guided by a concern not to interfere with international relations, in the same way that prerogative acts in the context of international relations are not open to challenge in the courts.

The system of referring preliminary questions has traditionally been used in two fields: interpreting treaties and assessing reciprocity.

In the first field, the interpretation of an ambiguous or unclear treaty, the Court called into question the referral system – which had, however, been discontinued at national level even before the Court's judgment (see the *GISTI* decision of 29 June 1990, *Conseil d'Etat*, full court) – and found against France in *Beaumartin* (cited above).

In my opinion, there are a number of reasons why the *Beaumartin* precedent should not be applied to the present case.

I consider that, while the interpretation of a treaty is a legal issue, the assessment of the reciprocity of an international treaty is an essentially political issue.

Furthermore, the parties only rarely have enough evidence of the situation in a foreign State, being unable to conduct the necessary investigations. It follows that a review of the factual data obtained, a task which may well be incumbent on the court, will in reality remain theoretical.

The assessment of the reciprocity requirement in Article 55 of the French Constitution entails examining whether or not an international undertaking has been applied on the basis of information about a foreign State's conduct, a process alien to the role of a court. The assessment of the conduct of a foreign State is more naturally a task for the diplomatic authorities than for the courts.

I would add that it is apparent from the Court's case-law that the right to a tribunal is not absolute but may be regulated by the Contracting States (see, among other authorities, *Levages Prestations Services v. France*, judgment of 23 October 1996, *Reports of Judgments and Decisions* 1996-V, p. 1543, § 40).

Even if one were to conclude that the right of access to a court had been restricted in the present case, that restriction in my opinion pursued a legitimate aim, that of observing the principle of the separation of powers.

That is why I consider that the *Conseil d'Etat* was entitled, without breaching the duty of independence imposed on it by, *inter alia*, Article 6 § 1 of the Convention, to consider itself to be bound by the opinion of the Minister for Foreign Affairs as to whether Algeria had implemented the "Evian Accords".

I therefore consider that Article 6 § 1 of the Convention was not breached in the present case.