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

FIFTH SECTION

CASE OF ASSOCIATION BURESTOP 55 AND OTHERS v. FRANCE

(Applications nos. 56176/18 and 5 others)

JUDGMENT

Art 6 § 1 (civil) • Access to court • Environmental NGO denied standing to contest the accuracy of information on the management of radioactive waste communicated by a public agency • Art 6 § 1 applicable to proceedings brought by applicant associations seeking compensation for damage sustained as a result of alleged violation of right to information and participation in decision-making process in environmental matters • Official approval conferred standing on association • By excluding nuclear hazards, the courts' interpretation limited to an excessive degree the scope of the association's registered purpose

Art 10 • Freedom to receive information • Effective review by the courts of the content and quality of information on radioactive waste management communicated by a public agency, pursuant to its statutory duty to provide information • Art 10 applicable • Access to information decisive for the exercise by the associations of their right to freedom of expression • Alleged dishonesty, inaccuracy or inadequacy of information provided by a public agency akin to a denial of access to information

STRASBOURG

1 July 2021

FINAL

01/10/2021

This judgment has become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Association Burestop 55 and Others v. France,

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

Síofra O'Leary, *President*,
Ganna Yudkivska,
Stéphanie Mourou-Vikström,
Lətif Hüseynov,
Jovan Ilievski,
Arnfinn Bårdsen,
Mattias Guyomar, *judges*,
and Victor Soloveytchik, *Section Registrar*,

Having regard to the applications (nos. 56176/18, 56189/18, 56232/18, 56236/18, 56241/18 and 56247/18) against the French Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 22 November 2018 by six associations registered under French law ("the applicant associations"): Burestop 55 – a collective in the *département* of Meuse opposed to the burying of radioactive waste / CDR55 (Burestop 55, no. 56176/18); ASODEDRA, an association which campaigns to raise awareness of the dangers of burying radioactive waste (no. 56189/18); MIRABEL-LNE (an inter-association movement for environmental issues in Lorraine, no. 56232/18); Fédération Réseau Sortir du Nucléaire (no. 56236/18); Les Habitants vigilants du Canton de Gondrecourt (no. 56241/18); and CEDRA 52, a collective opposed to the burying of radioactive waste in the *département* of Haute-Marne (no. 56247/18);

Having regard to the decision to give notice of the applications to the French Government ("the Government");

Having regard to the parties' observations;

Having deliberated in private on 8 June 2021,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerned, first, the right of access to a court, within the meaning of Article 6 § 1 of the Convention, of an environmental protection association and, secondly, the right to receive information on environmental risks, under Article 10 of the Convention.

THE FACTS

2. Burestop 55 and MIRABEL-LNE have their registered offices in Bar-le-Duc (in the *département* of Meuse, Grand Est administrative region). ASODEDRA has its registered office in Grand (*département* of Vosges, Grand Est). CEDRA 52 has its registered office in Saint Dizier

(*département* of Haute-Marne, Grand Est). Les Habitants vigilants du Canton de Gondrecourt has its registered office in Gondrecourt-le-Château (*département* of Meuse, Grand Est). Fédération Réseau Sortir du Nucléaire has its registered office in Lyons (*département* of Rhône, Auvergne-Rhône-Alpes). The applicant associations were represented by Mr G. Hannotin, a lawyer practising in Paris.

3. The French Government ("the Government") were represented by their Agent, Mr François Alabrune, Director of Legal Affairs at the Ministry for Europe and Foreign Affairs.

I. THE CIGÉO PROJECT

4. The applicants are environmental protection associations which are opposed to a planned industrial geological storage centre, known as "Cigéo".

5. The Cigéo centre has been designed for the storage, in deep geological repositories, of high-level and long-lived radioactive waste that is produced by all the French nuclear facilities and through the processing of fuels used in nuclear power stations. It is due to be constructed on a site located in the municipalities of Bure, Ribeaucourt, Mandres-en Barrois and Bonnet ("the Bure site"), on the borders of the *départements* of Meuse, Haute-Marne and Vosges, in the Grand Est administrative region.

6. Responsibility for the long-term management of this waste, which is particularly dangerous and has an exceptionally long half-life, has been entrusted to the National Agency for the Management of Radioactive Waste (ANDRA), a public industrial and commercial body to which this specific task has been delegated. Article L. 542-12 7° of the Environment Code states, in particular, that ANDRA is responsible for "informing the public about the management of radioactive waste and participating in the dissemination of scientific and technological knowledge in this sphere".

7. The Management of Radioactive Waste (Research) Act of 30 December 1991 established a fifteen-year research programme to identify a solution for dealing with the most dangerous types of radioactive waste. Three options were examined: separation and transmutation; geological storage; and long-term storage. ANDRA was given responsibility for researching geological storage.

8. In 1998 the French government selected the Bure site for construction of a laboratory to research radioactive waste storage in deep geological repositories. Building work began in 2000, and the laboratory, run by ANDRA, became operational in 2007.

9. The findings of the research carried out under the Management of Radioactive Waste (Research) Act were the subject of a public consultation, held in 2005. In 2006 Parliament selected storage in deep geological repositories as the reference solution for the management of high- and

intermediate-level, long-lived radioactive waste (Expenditure Authorisation (Sustainable Management of Radioactive Material and Waste) Act of 28 June 2006).

10. In 2009 ANDRA suggested to the Government that a 30-km^2 "zone of interest for further investigation" near Bure be chosen as the site for the underground storage centre. The Government agreed to that proposal in 2010.

11. In 2012, on the basis, in particular, of studies carried out in the Bure underground research laboratory, ANDRA submitted the outline for the future storage centre. The project was named "Cigéo".

12. Public consultation took place from 15 May to 15 October 2013. In April 2016 ANDRA submitted the "safety options file" for the Cigéo project, setting out in detail its technical specifications, to the Nuclear Safety Authority. Further legislation, namely the High and Intermediate-level Long-lived Radioactive Waste (Creation of a Reversible Deep Geological Repository (Procedures)) Act of 25 July 2016, set out the preliminary development work required for construction of a deep geological repository.

13. On 11 January 2018 the Nuclear Safety Authority issued a favourable opinion.

14. On 3 August 2020 ANDRA applied to the Ministry for Ecological Transition for a declaration that the Cigéo project was in the public interest, in order, specifically, to allow for compulsory acquisition of the land needed for its construction.

15. The Government have indicated that a public inquiry concerning the public-interest declaration is due to take place in 2021, and that the application for a licence to build the facility is due to be submitted in that same year.

16. Examination of the application for a licence to build the facility is expected to take three years.

17. If the project is approved, construction work could begin in 2023 or 2024. A ten-year pilot industrial phase would then follow, after which Cigéo would become operational.

II. ANDRA'S REPORT OF 21 JULY 2009

18. The "Safety Guide concerning the disposal of radioactive waste in a deep geological formation[1]" published in 2008 by the Nuclear Safety Authority stated, in particular, when defining its "fundamental objective", that "[t]he geological medium is therefore [to be] chosen and the disposal facility designed so that post-closure safety can be passive, in order to

[1] The English text is based on the translation provided here: ASN Guide No. 1 (french-nuclear-safety.fr)

protect individuals and the environment from the radioactive substances and toxic chemical substances contained in the radioactive waste, with no need for any intervention" (paragraph 4.1). In the section "The geological medium – technical siting choices", the Safety Guide sets out "The essential criteria when selecting a site" and states that areas "of exceptional value in terms of underground resources" should be avoided (paragraph 5.3). The appendix to the Safety Guide also points out that since it could reasonably be expected that the memory of underground sites would last for five hundred years, the risk of subsequent accidental disturbance by humans had to be taken into account, specifically, "the sites selected [must] not have any particular value from [a geothermal energy or heat storage perspective]" (Appendix A2-2.2.1), as such sites were likely to be the subject of drilling for geothermal purposes.

19. Following a report by a geophysical engineer in December 2002 stating that a "sizeable" geothermal resource – the Trias aquifer – had been located beneath the Bure site, the applicant associations submitted several requests to the Bure laboratory's local information and monitoring committee, asking that test drilling be carried out.

20. ANDRA carried out this test drilling in 2008, using procedures that were criticised by the applicant associations. In this connection, they indicated that the drilling company had used a pump with a weak maximum flow rate, and that this flow rate had been further restricted by the use of polymer drilling fluid, which had caused massive obstruction to the equipment. In addition, problems had arisen on account of clay debris falling into the borehole, resulting from the fact that ANDRA had ordered that 90 metres of fissile shale was to be left uncovered directly above the area where the drilling was to take place.

21. In a geothermal study report of 21 July 2009 ("Summary of the transposition zone survey 2007-08"), ANDRA, relying on the above drilling results, indicated that "the geothermal resource in the transposition zone [could be classified as] low-level" and that there was therefore no risk of accidental drilling after memory of the burial site had disappeared. The report was published in October 2009, in line with ANDRA's statutory duty to provide information.

22. In a letter of 17 December 2012, the applicant associations sought recognition by ANDRA that, by stating in its summary report of 21 July 2009 that the geothermal resource in the transposition zone was classified as low-level, it had disseminated incorrect and dishonest scientific and technological information, thereby acting negligently.

23. In its response of 18 January 2013, ANDRA stated that while it was true that paragraph A2-2.2.1 of the appendix to the Safety Guide provided that "the sites selected [must] not have any particular value [from a geothermal energy or heat storage perspective]", paragraph 5.3 of the Guide provided as a "technical [criterion]" that the burial site should be chosen in

such a way as to exclude areas "of exceptional value in terms of underground resources"; in consequence, its report had focused on whether there existed a "geothermal resource of exceptional value, the concept of particular value not having been defined [by the Guide] as a site-selection criterion". ANDRA added that, on the basis of "reliable results", it considered that there were "no thermal resources of exceptional value" at the site.

24. According to the applicant associations, by acting in this way ANDRA had replaced the criterion "absence of resources of 'exceptional value'" with the less stringent criterion of "absence of resources of particular [geothermal] value".

I. JUDGMENT OF THE NANTERRE *TRIBUNAL DE GRANDE INSTANCE* OF 16 MARCH 2015

25. On 14 May 2013 the applicant associations brought proceedings against ANDRA in the Nanterre *tribunal de grande instance*, seeking compensation for the damage caused by its failure to comply with its obligation to inform the public under Article L. 542-12 7 of the Environment Code. In that connection, the associations emphasised that ANDRA's conclusion concerning the geothermal potential of the site had been incorrect and had relied on a deliberately biased assessment of the available data. In their submission, ANDRA had failed in its obligation to provide information in three respects: (i) by misrepresenting the requirements for assessing the risk of future geothermal drilling, restricting it to the possible presence of resources of "exceptional" value rather than of "particular" value; (ii) by providing inaccurate and differing assessments of the geothermal resource in the vicinity of the Bure site, classifying it first as "low-level", then as "negligible", before admitting that the qualifier initially chosen "[had] indeed [led] to confusion"; and (iii) by providing false information about the consequences of drilling into a pocket of nuclear waste, going so far as to change its position as to whether it had carried out a study into the issue, and the exact purpose of that study.

26. Among other requests, the applicant associations asked the *tribunal de grande instance* to order ANDRA to pay each of them the sum of 3,000 euros (EUR) in compensation for the damage sustained, and EUR 1,000 under Article 700 of the Code of Civil Procedure (costs incurred and not included in expenses).

27. In support of their arguments, the applicant associations asserted that a report of 4 November 2013 by GeoWatt, a firm specialising in geothermal evaluations, commissioned by the Bure laboratory's local information and monitoring committee and submitted by them to the domestic court, indicated that "there [was] scope to develop the economic potential of the Trias geothermal resources in the Bure region". They added that, also in

2013, as part of the public consultation on the Cigéo project, the Institute for Radiation Protection and Nuclear Safety had acknowledged that the geothermal potential of the Bure site could "lead to boreholes being drilled into the facility in the future" and that, on 13 February 2014, ANDRA had indicated that "as a precautionary measure, [it] had foreseen a scenario in which attempts could be made to exploit the subsurface in the area of the storage facility and that a breach could occur", and that "tests [had] shown that even were this to occur, the potential containment levels would remain satisfactory".

28. On 16 March 2015 the Nanterre *tribunal de grande instance* declared the applicant associations' action inadmissible. It considered that the action did not concern the withholding of information on ANDRA's part, but rather the technical procedures used in conducting its study, the subsequent assessment and the resulting conclusions reached by it. The court held that only those public authorities who had commissioned or were the recipients of that study had standing to bring proceedings against ANDRA to establish liability for negligence in its task of designing nuclear waste storage sites and conducting all relevant and necessary studies. The court also noted that bringing this kind of civil action for damages against ANDRA was not within the registered purpose of any of the applicant associations and that, in the absence of a judgment convicting ANDRA of an offence under environmental law and finding it liable for negligence, they could not claim compensation in respect of non-pecuniary damage. On that basis, the court concluded that the applicant associations had not demonstrated that they had an existing interest in bringing an action in damages against ANDRA.

II. VERSAILLES COURT OF APPEAL'S JUDGMENT OF 23 MARCH 2017

29. The applicant associations appealed to the Versailles Court of Appeal against the judgment of 16 March 2015. On the first page of their grounds of appeal of 4 January 2016, they indicated that MIRABEL-LNE was an officially approved association under Article L. 141-1 of the Environment Code. They asked, in particular, that the Court of Appeal order ANDRA to pay EUR 3,000 to each of them "in compensation for the non-pecuniary damage sustained as a result of the wrongful dissemination of incorrect information" and EUR 1,200 under Article 700 of the Code of Civil Procedure (costs incurred and not included in expenses).

30. ANDRA argued, in particular, that it could not be held liable for any negligence in the performance of its duty to inform the public about the management of radioactive waste and participate in the dissemination of scientific and technological knowledge in this sphere. It emphasised that its conclusions concerning the absence of geothermal resources of

"exceptional" value at the Bure site were irrefutable, and had been supported by a 2013 opinion from the Institute for Radiation Protection and Nuclear Safety and opinions from the National Evaluation Committee (*Commission Nationale d'Évaluation*) in 2010 and 2014, such that it could not be accused either of infringing the Nuclear Safety Authority's Safety Guide or of having provided the public with incorrect or incomplete information about the true geothermal potential of the Bure site. It observed, moreover, that the "zone of interest for further investigation" on which the Cigéo deep geological storage facility would be located had been approved by the National Evaluation Committee (in an opinion of 16 December 2009), the Nuclear Safety Authority (in an opinion of 5 January 2010), and the Ministry of Ecology, which, on 9 March 2010, had authorised further investigations in that zone.

31. In a judgment of 23 March 2017, the Court of Appeal upheld the judgment of 16 March 2015 in so far as it had declared inadmissible the action brought by MIRABEL-LNE. However, it quashed the part of the judgment declaring inadmissible the action brought by the other applicant associations.

32. Emphasising that an association could take legal action in the defence of collective interests where these fell within its registered purpose, the Court of Appeal, ruling on the admissibility of the appeal, noted that the registered purposes of the applicant associations were to combat the environmental and health hazards arising from the nuclear industry and related activities and development projects, and to inform the public about the dangers of burying radioactive waste. The exception was MIRABEL-LNE, the registered purpose of which referred, in more general terms, to protecting the environment. In this respect, the reasoning of the judgment reads as follows:

> "... the associations complain that ANDRA ... disseminated inaccurate information concerning the geothermal resources at the Bure site, in so far as those resources are purportedly more sizeable than it indicated, something that could create an additional risk that there will be an accidental breach at the future site once the memory of the planned burial has been lost.
>
> Even without statutory authority, and in the absence of specific statutory provisions regarding the legal avenues to be used, an association may take legal action in the defence of collective interests if these fall within its registered purpose.
>
> The registered purpose of almost all the applicant associations is to combat the environmental and health hazards arising from the nuclear industry and from related activities and development projects ..., [and] to inform the public about the dangers of burying radioactive waste ... The exception is MIRABEL-LNE, whose constitution is expressed in more general terms, indicating that its purpose is protection of the environment.
>
> It is correctly recalled that ANDRA is obliged, under Article L. 542-12 7° of the Environment Code, to inform the public about the management of radioactive waste

and to assist in disseminating scientific and technological knowledge in this sphere. It is, moreover, not contested that the report of 21 July 2009 was made public.

It is therefore indisputable that discussion of the information made available to the public by ANDRA falls within the registered purpose of the first four [*sic*] appellants. Potential inaccuracies are therefore capable of harming the collective interests that they defend. Only the association MIRABEL-LNE, given the general nature of the terms used in defining its registered purpose, cannot assert standing.

Furthermore, while it is true that only those authorities which tasked ANDRA with this project would have standing to hold it responsible for negligent execution of its tasks, nothing prevents third parties from holding it to account, in tort, for any failure to fulfil its statutory duty to provide information to the public ...”

33. Ruling on the merits, the Court of Appeal then dismissed the actions brought by the five applicant associations whose standing it had recognised. Its reasoning reads as follows:

“In order for ANDRA to be held liable, it must be established that there has been negligence, and also damage – which must have been personally sustained by the appellants –, and a causal link between the two.

A careful examination of the associations’ submissions does not, however, disclose the least negligence on the part of ANDRA. It has quite rightly pointed out that its work was approved by all its partners, and it has provided specific responses to the arguments put forward by the associations, such that the alleged failures to provide accurate information and the alleged inaccuracies have not been sufficiently made out. Furthermore, the fact that there is disagreement over the assessment of the technical data in question, in particular concerning an issue as hypothetical as the possible future exploitation of the [site’s] geothermal resources, is not in itself sufficient to establish that ANDRA demonstrated incompetence, negligence or bias in the views that it expressed, either in the contested report or in its subsequent communications. Lastly, the importance of the environmental issues raised by the Cigéo project calls for public consultation, and it is inconceivable that the mere expression, after in-depth studies, of favourable conclusions in respect of this project could be classed as wrongful *per se*.

It follows that the claims for compensation lodged by the [five] associations [with standing] are dismissed, without there being any need to examine whether they personally sustained damage or whether there existed a causal link.”

III. COURT OF CASSATION’S JUDGMENT OF 24 MAY 2018

34. The applicant associations lodged appeals on points of law against the judgment of 23 March 2017. In their first ground of appeal, they submitted that, by declaring MIRABEL-LNE’s action inadmissible, the Court of Appeal had breached Article 31 of the Civil Code, which provided that any person who could demonstrate a legitimate interest in the success or failure of a claim was entitled to bring legal action. They also submitted that MIRABEL-LNE was “an officially approved association for the protection of the environment”, within the meaning of Article L. 141-1 of the Environment Code, and that such associations always had standing, within the limits of their formal authorisation, to bring proceedings for the

protection of the environment. In a second ground of appeal, they argued, in particular, that there had been a violation of Article L. 542-12 of the Environment Code in so far as it imposed on ANDRA an obligation to provide information, and they criticised the inadequacy of the Court of Appeal's review in this respect.

35. In a judgment of 24 May 2018, the Court of Cassation dismissed the appeal on points of law, for the following reasons:

> "... As to the first ground ...:
>
> ... First, [MIRABEL-LNE] did not argue in its submissions that, as an officially approved association, it had standing to bring proceedings; this is therefore a new ground of appeal, mixing facts and law.
>
> Secondly, having found that the aim of the associations' [legal] action was to establish ANDRA's liability for having disseminated inaccurate information about the geothermal resources at the Bure site, capable of creating a risk of an accidental breach, and having noted, without distortion, that, according to its constitution, the general purpose of [MIRABL-LNE] was to protect the environment, the Court of Appeal, in the exercise of its unfettered discretion, concluded that that association could not claim to have standing and that its action was inadmissible.
>
> It follows that the remainder of this ground, which is partly inadmissible, is ill-founded.
>
> ... As to the second ground ...:
>
> Having noted that the work carried out by ANDRA had been approved by all its partners, that the alleged failures to provide correct information and alleged inaccuracies had not been sufficiently made out, and that the existence of a disagreement on how to assess the technical data and the hypothetical future possibility of attempts to exploit the geothermal resources [at the site] was not sufficient *per se* to demonstrate that ANDRA had acted incompetently, negligently or in a biased manner, the Court of Appeal, which did not reverse the burden of proof and which was not bound to follow the arguments put forward by the parties, was able, for those reasons alone, to conclude that no negligence had been made out on ANDRA's part, and it provided legal justification for its decision ..."

RELEVANT DOMESTIC LEGAL FRAMEWORK AND PRACTICE

I. STANDING OF ASSOCIATIONS IN CIVIL PROCEEDINGS

36. Article 31 of the Code of Civil Procedure provides that "any person who can demonstrate a legitimate interest in the success or failure of a claim may take legal action, without prejudice to those cases where the law confers that right solely upon persons whom it authorises to make or defend a claim, or to defend a specific interest".

37. An association may take legal action in the defence of collective interests if these fall within its registered purpose (see, for example, judgment no. 04-20.636 of the Court of Cassation, Third Civil Division,

26 September 2007, and judgment no. 06-22038 of the Court of Cassation, First Civil Division, 18 September 2008).

38. With regard to environmental protection associations in particular, Article L. 142-2 of the Environment Code, as amended by the Restoration of Biodiversity, Nature and the Countryside Act (Law no. 2016-1087 of 8 August 2016), provides as follows:

> "The officially approved associations referred to in Article L. 141-2 may exercise the rights conferred on civil parties in respect of facts that constitute direct or indirect interference with the collective interests that it is their purpose to defend, where those facts amount to an infringement of the legislative provisions on protection of the environment and the natural world, improvement of the living environment, protection of water, air, soil, landscapes and the countryside, urban development and planning and sea fishing, or are intended to combat pollution and nuisance, to ensure nuclear safety and protection from radiation, and to combat deceptive or misleading commercial practices and advertising that make claims about the environment, or an infringement of the related implementing legislation.
>
> ..."

39. The officially approved associations referred to in Article L. 141-2 of the Environment Code include associations for environmental protection that have been officially approved under Article L. 141-1 of the same Code, which provides:

> "If they have been operating for at least three years, associations that are formally registered and carry out their registered activities in the areas of the protection of nature and wildlife, the improvement of the living environment, protection of water, air, soil, landscapes and the countryside, and of urban development and planning, or are intended to combat pollution and nuisance and, more generally, work essentially for protection of the environment, may obtain reasoned official approval from the administrative authority.
>
> ... These associations are referred to as 'officially approved environmental protection associations'.
>
> The approval is granted under the conditions defined by a decree of the *Conseil d'État*. It is valid for a limited period and within a framework determined with regard to the geographical area in which the association carries out the activities referred to in the first paragraph. It may be renewed. It may be revoked where the association no longer fulfils the conditions which led to it being granted. ..."

II. NATIONAL AGENCY FOR THE MANAGEMENT OF RADIOACTIVE WASTE (ANDRA)

40. ANDRA is a public industrial and commercial body. In the version applicable at the material time (as amended by Law no. 2006-739 of 28 June 2006), Article L. 542-12 of the Environment Code provided as follows:

> "The National Agency for the Management of Radioactive Waste, a public industrial and commercial body, is responsible for the long-term management of radioactive waste, including:

1° Making, updating on a three-yearly basis and publishing an inventory of the radioactive materials and waste present in France and their location on the national territory, the waste referred to in Article L. 542-2-1 being listed by country;

2° Conducting or having conducted, in accordance with the national strategy set out in Article L. 542-2-1, research and studies into surface storage and storage in deep geological repositories, and ensuring their coordination;

3° Contributing, in the conditions set out in the penultimate paragraph of this Article, to evaluation of the costs incurred by implementation of long-term management solutions for high and intermediate-level, long-lived radioactive waste, depending on its type;

4° Providing, in compliance with the nuclear safety norms, the specifications for storing radioactive waste and advising the competent administrative authorities on the specifications for conditioning of that waste;

5° Designing, developing, building and managing radioactive waste surface-storage centres or deep geological repository centres, taking into account the long-term prospects for the production and management of that waste, and conducting all necessary studies to that end;

6° Ensuring the collection, transportation and reception of radioactive waste and the rehabilitation of sites contaminated with radioactive pollution, at the request and at the expense of those responsible for them, or by order of the authorities where those responsible for the waste or the sites in question have failed in their duties;

7° Providing the public with information on the management of radioactive waste and participating in the dissemination of scientific and technological knowledge in this sphere;

8° Disseminating its expertise to entities operating in other countries.

...

The Agency may carry out joint projects with any interested party in order to inform the public and disseminate scientific and technological knowledge.”

III. SAFETY GUIDE CONCERNING THE DISPOSAL OF RADIOACTIVE WASTE IN A DEEP GEOLOGICAL FORMATION

41. The “Safety Guide concerning the disposal of radioactive waste in a deep geological formation” issued by the Nuclear Safety Authority and published on 12 February 2008 is available in French on the Nuclear Safety Authority’s website (https://www.asn.fr) or in English at the following address: https://www.french-nuclear-safety.fr/asn-regulates/asn-guides/asn-guide-no.-1.

RELEVANT INTERNATIONAL AND EUROPEAN UNION LAW

I. AARHUS CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS

42. France ratified the Aarhus Convention of 25 June 1998 on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters on 8 July 2002 (the text of the Convention is available on the United Nations Treaty Collection website (https://treaties.un.org)).

43. In its Preamble, the Parties to the Convention state that they "[recognise] the importance of the respective roles that individual citizens, non-governmental organizations and the private sector can play in environmental protection" and that they are "concerned that effective judicial mechanisms should be accessible to the public, including organizations, so that its legitimate interests are protected and the law is enforced".

44. Article 2 § 4 provides that, for the purposes of that Convention, "'The public' means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups;".

45. Article 5, concerning the collection and dissemination of environmental information, provides as follows:

Article 5 – collection and dissemination of environmental information

"1. Each Party shall ensure that:

(a) Public authorities possess and update environmental information which is relevant to their functions;

(b) Mandatory systems are established so that there is an adequate flow of information to public authorities about proposed and existing activities which may significantly affect the environment;

(c) In the event of any imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority is disseminated immediately and without delay to members of the public who may be affected.

2. Each Party shall ensure that, within the framework of national legislation, the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible, *inter alia*, by:

(a) Providing sufficient information to the public about the type and scope of environmental information held by the relevant public authorities, the basic terms and

> conditions under which such information is made available and accessible, and the process by which it can be obtained;
>
> (b) Establishing and maintaining practical arrangements, such as:
>
> (i) Publicly accessible lists, registers or files;
>
> (ii) Requiring officials to support the public in seeking access to information under this Convention; and
>
> (iii) The identification of points of contact; and
>
> (c) Providing access to the environmental information contained in lists, registers or files as referred to in subparagraph (b) (i) above free of charge.
>
> 3. Each Party shall ensure that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunications networks. Information accessible in this form should include:
>
> (a) Reports on the state of the environment, as referred to in paragraph 4 below;
>
> (b) Texts of legislation on or relating to the environment;
>
> (c) As appropriate, policies, plans and programmes on or relating to the environment, and environmental agreements; and
>
> (d) Other information, to the extent that the availability of such information in this form would facilitate the application of national law implementing this Convention, provided that such information is already available in electronic form.
>
> ...”

46. France made the following “Interpretative declaration concerning Articles 4, 5 and 6 of the Convention”:

> “The French Government will see to the dissemination of relevant information for the protection of the environment while, at the same time, ensuring protection of industrial and commercial secrets, with reference to established legal practice applicable in France.”

II. DIRECTIVE 2003/4/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 28 JANUARY 2003 ON PUBLIC ACCESS TO ENVIRONMENTAL INFORMATION

47. Articles 7 and 8 of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information (available on the EUR-Lex website, https://eur-lex.europa.eu) concern the dissemination and quality of environmental information. Article 2 § 6 provides that, for the purposes of the Directive, “‘Public’ shall mean one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organisations or groups”.

THE LAW

I. JOINDER OF THE APPLICATIONS

48. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 AND ARTICLE 13 OF THE CONVENTION IN RESPECT OF MIRABEL-LNE

49. MIRABEL-LNE complained of a violation of the "right to a court" and of its right to an effective remedy, in that its claim for damages had been declared inadmissible for lack of standing and that its argument based on its status as an officially approved association within the meaning of Article L. 141-1 of the Environment Code had been rejected by the Court of Cassation. It relied on Article 6 § 1 and Article 13 of the Convention. The relevant part of Article 6 § 1 provides as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

50. The Government did not dispute the admissibility of this complaint. Specifically, referring to the decision in *Collectif national d'information et d'opposition à l'usine Melox – Collectif Stop Melox et Mox v. France* (no. 75218/01, 28 March 2006), they stated that they did not dispute the applicability of Article 6 § 1 to the proceedings for civil liability brought by the applicant associations before the domestic courts.

51. However, the Court considers it necessary to examine the latter question of its own motion. It reiterates that it has to satisfy itself that it has jurisdiction in any case brought before it, and is therefore obliged to examine the question of its jurisdiction at every stage of the proceedings even where no objection has been raised in this respect; this is the situation in particular as concerns its jurisdiction *ratione materiae* (see, for example, *Lacatus v. Switzerland*, no. 14065/15, § 52, 19 January 2021, and *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006-III).

52. Article 6 § 1 applies under its civil head to any domestic proceedings relating to a dispute ("*contestation*" in the French text) over, *inter alia*, one or more "rights" of a "civil" nature of which an individual may consider himself or herself the holder. It must be possible to say, at least on arguable grounds, that the "rights" in issue are recognised under domestic law. In addition, the dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. Furthermore, the outcome of the proceedings must be directly

decisive for the "right" in question: mere tenuous connections or remote consequences are not sufficient to bring Article 6 § 1 into play (see, for example, *Collectif national d'information et d'opposition à l'usine Melox – Collectif Stop Melox et Mox*, cited above).

53. In the last-cited case, to which the Government saliently referred, an environmental protection association alleged a violation of Article 6 § 1 of the Convention in the context of proceedings to have set aside a decree authorising the enlargement of a nuclear fuel plant. Its main argument before the domestic court was that the plans had not been the subject of a public inquiry and that no measures had been taken to inform the public of them, in breach of domestic and EU law and of the Court's case-law.

54. Examining whether Article 6 § 1 was applicable under its civil head, the Court noted that the association was seeking primarily to defend the general interest and that, seen from that perspective, its "dispute" had not concerned a civil "right" to which it could itself lay claim. A strict reading of Article 6 § 1 would therefore have led to the conclusion that it was not applicable to the proceedings in question. However, holding that such an approach would have been at variance with the realities of today's civil society, where associations played an important role by, *inter alia*, defending specific causes before the authorities or the domestic courts, particularly with regard to environmental protection, the Court ruled that the above-mentioned criteria had to be applied with a degree of flexibility where an association was complaining of a breach of Article 6 § 1. In so doing, it noted that the public's right to be informed and to participate in the decision-making process with regard to an activity involving a risk to health or the environment lay at the heart of the applicant association's claims. It then emphasised that, as civil-society actors, non-governmental organisations with legal personality undoubtedly formed part of that "public", noting that "[t]he public" within the meaning of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (which France had ratified) meant "one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups" (Article 2 § 4 of that Convention).

55. The Court concluded that, while the purpose of the impugned proceedings had fundamentally been to protect the general interest, the "dispute" raised by the applicant association had also had a sufficient link with a "right" to which it could claim to be entitled as a legal entity for Article 6 § 1 not to be found to be automatically inapplicable.

56. Next, in the light of domestic and EU legal instruments on the "right" to receive information and to participate in environmental matters, and having regard to the domestic courts' detailed reasoning in rejecting the applicant association's arguments alleging a breach of those instruments, the Court concluded that it could be said "at least on arguable grounds", that

that “right” was recognised under domestic law and that the “dispute” was “genuine and serious”. Lastly, the Court considered that there could be no doubt that the proceedings had been directly decisive for that “right” and that its “civil” nature could essentially be inferred from the fact that it was a right that any interested “person” could individually assert before the domestic courts. In consequence, it found that Article 6 § 1 of the Convention was applicable to the proceedings in question.

57. In the present case, the proceedings brought by the applicant associations before the domestic courts were aimed at obtaining damages for what they considered to be negligent performance of the duty to inform the public, imposed on the National Agency for the Management of Radioactive Waste (ANDRA) by Article L. 542-12 7 of the Environment Code. Thus, as in the case of *Collectif national d’information et d’opposition à l’usine Melox – Collectif Stop Melox et Mox* (cited above), the issue of the right to be informed and to participate in the decision-making process in environmental matters lay at the heart of their claims. It follows that although the purpose of their “dispute” was undeniably to protect the public interest, it also concerned a “civil right”, recognised under domestic law, to which the applicant associations could claim to be entitled.

58. The Court also notes that although the applicant associations acted together before the domestic courts, each association had lodged its own claim for compensation in respect of the non-pecuniary damage it had allegedly sustained on account of ANDRA’s dissemination of incorrect information. This confirms that their intention had been to defend their own right to information.

59. As to whether the dispute was serious, this can be deduced in the present case from the substance of the applicant associations’ pleadings relating to the breach of that right, as set out in their appeals (see, for example, *Association Greenpeace France v. France* (dec.), no. 55243/10, 13 December 2011) and, as in the *Collectif national d’information et d’opposition à l’usine Melox – Collectif Stop Melox et Mox* case, from the domestic courts’ reasoning in rejecting them. Lastly, the Court has no doubt that the proceedings brought by the applicant associations, which were seeking compensation for the damage they had allegedly sustained on account of a breach of the right to be informed and to participate in the decision-making process in environmental matters, were directly decisive *vis-à-vis* that right.

60. The Court accordingly reaches the same conclusion as it did in the *Collectif national d’information et d’opposition à l’usine Melox – Collectif Stop Melox et Mox* case (cited above) regarding the applicability of Article 6 § 1 of the Convention.

61. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

62. The association MIRABEL-LNE emphasised that the aim of its complaint was not to have its case as submitted to the domestic courts re-examined by the Court, but rather for the Court to find that its right of access to a court had been infringed. It also argued that the allegedly general nature of its registered purpose could not justify a restriction on the right of access to a court: first, because its constitution set out the registered purpose *ratione materiae* and *ratione loci*; and, secondly, because the damage referred to before the domestic courts concerned elements that were set out in its registered purpose (protection of both surface and deep water, protection against pollution, especially of the soil, and the prevention of health risks). As to the legitimate aim relied on by the Government, MIRABEL-LNE considered that misinterpretation and violation of the domestic law could not form part of the proper administration of justice. It added that the contested restriction on its right of access had been disproportionate, given the importance of what was at stake in its claim and its status as an officially approved association under the Environment Code. On the latter point, MIRABEL-LNE argued that it had consistently informed the domestic courts that it was an officially approved association, and referred in particular to its grounds of appeal, in which it had specified that it was "officially approved under ... Article L. 141-1 of the Environment Code". It also argued that it had not been foreseeable that the Court of Appeal would declare its action inadmissible for lack of interest to bring proceedings, in contrast to the actions brought by its co-appellants; as a result, the debate on the admissibility of its action in terms of its interest to act had arisen only when the Court of Appeal had delivered its judgment. Lastly, it submitted that the ground of appeal based on its status as an officially approved association was in effect a point of pure law, which would not have been a matter for discussion had the Court of Appeal, which had been apprised of this fact, duly noted it in its judgment. MIRABEL-LNE inferred that it had been punished on account of an oversight on the part of the Court of Appeal.

63. As a preliminary observation, the Government submitted that MIRABEL-LNE's real aim was to challenge the application of domestic law in its case and to have its dispute re-examined by the Court. They then explained that under French law associations were entitled to take legal action either if they were officially approved and had therefore been granted the relevant statutory authority or if they were defending the specific collective interests set out in their registered purpose. They argued that this restriction on associations' right of access to a court – which was intended to avoid an excessive workload for the courts and possible abuse by associations, such as using the right of access to justice for financial gain –,

the impossibility of raising a new ground of mixed fact and law before the Court of Cassation, and the latter's refusal to reassess the facts of the case had pursued the legitimate aim of the proper administration of justice. The Government also considered that the restriction on the right of access to a court complained of in the present case had not been disproportionate to that aim, in that, first, it had not been absolute, since MIRABEL-LNE had remained at liberty to bring proceedings within the limits of its constitution or to amend it, and, secondly, that the action brought by the five other associations had been declared admissible. They added that MIRABEL-LNE could not argue that its ground of appeal based on the existence of official approval was a point of pure law and that it had been impossible to identify it until after delivery of the appeal judgment; contrary to MIRABEL-LNE's submissions, the Court of Cassation did indeed assess the reasoning when ruling that it was within the lower court's discretion to assess appellants' standing.

2. The Court's assessment

64. The Court would begin by reiterating that where, as in the present case (see paragraphs 57-60 above), Article 6 § 1 is applicable, its role in relation to Article 13 is that of a *lex specialis*: its safeguards, implying the full panoply of a judicial procedure, are stricter than, and absorb, those of Article 13. It is therefore appropriate to examine the present complaint solely under Article 6 § 1 (see, for example, *Ravon and Others v. France*, no. 18497/03, § 27, 21 February 2008).

65. Furthermore, given that Article 6 § 1 is applicable, the decision to declare the action lodged by MIRABEL-LNE with the domestic courts inadmissible for lack of standing raises an issue in respect of the right of access to a court as secured under that provision.

66. The Court reiterates in this connection that the right of access to the courts is not absolute; the State, which enjoys a certain margin of appreciation in this regard, may be subject to limitations permitted by implication – in particular where the conditions of admissibility of an appeal are concerned (see, for example, *L'Erablière A.S.B.L. v. Belgium*, no. 49230/07, § 35, ECHR 2009 (extracts)), since by its very nature the right of access calls for regulation by the State, which regulation may vary in time and in place according to the needs and resources of the community and of individuals. In laying down such regulation, the Contracting States enjoy a certain margin of appreciation. Whilst the final decision as to observance of the Convention's requirements rests with the Court, it is no part of the Court's function to substitute for the assessment of the national authorities any other assessment of what might be the best policy in a given field. Nonetheless, the limitations applied must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with

Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, for example, *Zubac v. Croatia* [GC], no. 40160/12, § 78, 5 April 2018, with further references). The right of access to a court is impaired when the rules cease to serve the aims of legal certainty and the proper administration of justice and form a sort of barrier preventing the litigant from having his or her case determined on the merits by the competent court (see *L'Erablière A.S.B.L.*, cited above, § 35).

67. The Court would also stress that it is not its function to deal with errors of fact or law allegedly made by a national court, unless and in so far as they may have infringed rights and freedoms protected by the Convention. Normally, issues such as the weight attached by the national courts to given items of evidence or to findings or assessments submitted to them for consideration are not for the Court to review. The Court should not act as a fourth instance and will not therefore question under Article 6 § 1 the judgment of the national courts, unless their findings can be regarded as arbitrary or manifestly unreasonable (see, in particular, *Zubac*, cited above, § 79, and the references cited therein). This applies in particular to the interpretation of procedural rules (see, for example, *Kurşun v. Turkey*, no. 22677/10, § 95, 30 October 2018).

68. In the present case, in order to justify the inadmissibility decision in respect of the applicant association's action, the Government referred to the conditions governing associations' access to the courts when seeking to uphold the collective interests that it is their purpose to defend. In that connection, the fundamental condition, compliance with which was reviewed by the Versailles Court of Appeal in its judgment of 23 March 2017, was based on the correlation between the appellant association's registered purpose and the collective interests which it was seeking to defend before the courts. The Government argued that that limitation was intended to prevent an excessive workload for the courts and possible abuse by associations, such as using the right of access to justice for financial gain.

69. The Court does not question the legitimacy of those aims.

70. It observes, however, that the action that MIRABEL-LNE wished to bring before the courts related to the determination of a dispute concerning a civil right, for the purposes of Article 6 § 1, to which it could claim to be entitled (the right to receive information and to participate in environmental matters). Thus, that action was also aimed at defending MIRABEL-LNE's own interests. The Government, which argued exclusively from the viewpoint that associations were responsible for defending collective interests, have not provided any evidence capable of establishing that, in the circumstances of the present case, the refusal to examine a dispute concerning such a civil right pursued a legitimate aim and was proportionate to it.

71. Moreover, the Court notes, first, that the Versailles Court of Appeal disregarded the fact that MIRABLE-LNE was officially approved under Article L. 141-1 of the Environment Code, although it had clearly indicated this information on the first page of its grounds of appeal (see paragraph 29 above). As the Government have acknowledged, however, such approval conferred, in principle, standing. It appears from Article L. 142-2 of the Environment Code, as amended by the Law of 8 August 2016, that such officially approved associations "[could] exercise the rights conferred on civil parties in respect of facts that constitute direct or indirect interference with the collective interests that it is their purpose to defend and that amount to an infringement of the legislative provisions on protection of the environment and the natural world ... or which are intended to combat pollution and nuisance, to ensure nuclear safety and protection from radiation ..., or ... of the related implementing legislation" (see paragraph 38 above). The Court notes, furthermore, that the Law of 13 June 2006 expressly extended the standing of environmental protection associations officially approved under Article L. 141-1 of the Environment Code to disputes about facts constituting a breach of the legislation intended to ensure "nuclear safety and protection from radiation". Secondly, the Court notes that in declaring the action brought by MIRABEL-LNE inadmissible, the Versailles Court of Appeal concluded that, unlike the other applicant associations, its registered purpose did not explicitly include either combating the environmental and health risks posed by the nuclear industry and related activities and development projects, or informing the public about the dangers of burying radioactive waste, but was worded in more general terms, stating that the association's purpose was that of environmental protection. However, that approach cannot be considered acceptable. First, it amounted to drawing a distinction between protecting against nuclear risks and protecting the environment, although the former is clearly an integral part of the latter. Secondly, the Court of Appeal's interpretation of the applicant association's constitution had the effect of excessively limiting the scope of its registered purpose, although at the material time Article 2 of that constitution already referred to the prevention of "technological hazards".

72. The conclusion reached by the Versailles Court of Appeal and upheld by the Court of Cassation, which placed a disproportionate restriction on the right of access to a court, thus appears, in this regard, manifestly unreasonable.

73. It follows that there has been a violation of Article 6 § 1 of the Convention in respect of the association MIRABEL-LNE.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 AND ARTICLES 8, 10 AND 13 OF THE CONVENTION

74. The applicant associations complained of a violation of their right to a fair hearing on account of the fact that the domestic courts had rejected their claims without providing valid reasons, on ineffective legal grounds, and had failed to determine the merits of their claims or to conduct the requisite verifications. They relied on Article 6 § 1 of the Convention.

They also submitted that their right to receive information had been rendered nugatory by the French courts, in that they had failed to verify the accuracy of the information communicated by ANDRA, and that those courts had thereby also breached the applicant associations' right of access to a court. They relied on Article 6 § 1 and Article 10 of the Convention.

The applicant associations also complained of a violation of their right to receive information, arising from the fact that ANDRA, which was required under domestic law to provide information, had issued inaccurate information about the environmental risks and dangers, which was tantamount to a "failure to provide information". They relied on Articles 8 and 10 of the Convention.

Lastly, the applicant associations complained of a violation of their right to an effective remedy on account of the fact that, by deferring to the unfettered discretion of the lower courts, the Court of Cassation had refused to rule on the above-mentioned Convention violations. They relied on Article 13 of the Convention.

75. The Court notes that all of these complaints concern the right to information in the sphere of environmental risks and compliance with procedural safeguards in that context. Reiterating that it is the master of the characterisation to be given in law to the facts of a case, and is not bound by the characterisation given by an applicant or a Government (see, among many other authorities, *X and Others v. Bulgaria* [GC], no. 22457/16, § 149, 2 February 2021), the Court finds it more appropriate to examine the facts under Article 10 of the Convention, which provides as follows:

Article 10

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or

rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Admissibility

1. *Applicability of Article 10 of the Convention*

76. The Government noted that the Court had held in *Magyar Helsinki Bizottság v. Hungary* ([GC], no. 18030/11, 8 November 2016) that Article 10 could be read as comprising an individual right of access to State-held information and an obligation on the State to provide such information, where disclosure of the information had been imposed by an enforceable judicial decision and where access to the information was instrumental for the individual's exercise of his or her right to freedom of expression, in particular "the freedom to receive and impart information", and where its denial constituted an interference with that right. They considered, however, that the above case-law provided for a right to receive information only as a corollary to the right to impart information and therefore only covered a scenario where access to information had been denied by the authorities. That had not been the situation in the present case, however, since ANDRA had communicated of its own accord the information at issue, in line with its statutory duty to inform the public. In consequence, the Government concluded that the complaint was incompatible *ratione materiae* with the provisions of the Convention.

77. The applicant associations argued that the Government's approach amounted to inviting the Court not to rule on an issue on the sole ground that it was novel. However, the Court had repeatedly held that the Convention was a living instrument, which had to be interpreted in the light of present-day conditions and of the ideas prevailing in democratic States today, and that that evolutive interpretation was a precondition for the effectiveness of the protection of fundamental rights. In their view, the issue in this case should be approached in the following manner: the dissemination of information was provided for by the State itself, thus creating an obligation to provide information, which they were entitled to receive; the aim remained to inform the public, and in the present case, to protect the public's right of access to accurate information, that is, to protect against disinformation by ANDRA. In the applicant associations' view, the refusal to provide information and the provision of allegedly inaccurate information were two sides of the same coin. The Government's approach was tantamount to being satisfied by the mere fact of information having been provided, even if it was entirely irrelevant, thereby adopting an excessively formalistic and highly ineffective interpretation of the right to information, which went to the merits of the complaint.

78. The Court reiterates that it held in *Magyar Helsinki Bizottság* (cited above, §§ 149-56) that there had been an evolution in favour of the

recognition, under certain conditions, of a right to freedom of information. Observing furthermore that that evolution was mirrored in the position taken by other international human rights bodies and that many member States had enacted legislation on freedom of information, the Court provided the following clarification of the applicable principles:

> "156. ... The Court continues to consider that 'the right to freedom to receive information basically prohibits a Government from restricting a person from receiving information that others wish or may be willing to impart to him'. Moreover, 'the right to receive information cannot be construed as imposing on a State positive obligations to collect and disseminate information of its own motion'. The Court further considers that Article 10 does not confer on the individual a right of access to information held by a public authority nor oblige the Government to impart such information to the individual. However, ... such a right or obligation may arise, firstly, where disclosure of the information has been imposed by a judicial order which has gained legal force ... and, secondly, in circumstances where access to the information is instrumental for the individual's exercise of his or her right to freedom of expression, in particular 'the freedom to receive and impart information' and where its denial constitutes an interference with that right."

79. Article 10 of the Convention does not therefore confer a general right of access to information held by the State, but merely guarantees, to a certain extent and under certain conditions, a right of access to such information and an obligation on the public authorities to impart it.

80. That being said, the Court cannot accept the Government's argument that the principles set out in *Magyar Helsinki Bizottság* would only apply in a situation where the authorities had refused a request for information, such that they were not applicable to the present case.

81. Admittedly, in so far as the right to receive information as provided for in Article 10 does not impose on States positive obligations to collect and disseminate information of their own motion, it is primarily if a request for access to information is rejected by the authorities of a given State that an issue is likely to arise under Article 10. A State could, however, introduce an obligation to collect and/or disseminate information of its own motion.

82. In the present case, the domestic law imposed on ANDRA, a public body, a duty to provide the public with information on the management of radioactive waste. As is clear from the reasoning of the Versailles Court of Appeal's judgment of 23 March 2017, that duty entailed an obligation to inform the public of its own motion about developments in the Cigéo project, particularly with regard to the geothermal potential of the Bure site. ANDRA did not contest this before the domestic courts and the Government have not done so before the Court.

83. That being so, the Court considers that the circumstances of the present case fall within the second of the alternatives set out in the *Magyar Helsinki Bizottság* judgment, referred to above, according to which a right of access to information held by a public authority and an obligation on the

State to impart it may arise under Article 10 where access to the information in question is instrumental for the exercise of the individual's right to freedom of expression, in particular the freedom to receive and impart information, and that its denial may constitute an interference with the exercise of that right.

84. The Court held in the above judgment (§§ 157-70) that the question whether and to what extent the denial of access to information constituted an interference with an applicant's freedom-of-information rights had to be assessed in each individual case and in the light of its particular circumstances, on the basis of the following criteria: (1) the purpose of the information request; (2) the nature of the information sought; (3) the role of the applicant; and (4) whether the information was ready and available.

85. The Court considers that the same should apply where the alleged interference does not arise from a denial of access to information, but, as in the present case, from the allegedly dishonest, inaccurate or inadequate nature of information provided by a public authority pursuant to an obligation, imposed by domestic law, to impart information. In the Court's view, the provision of dishonest, inaccurate or inadequate information in such cases is akin to a denial of access to information.

86. With regard to the first of the above-mentioned four criteria, it must be ascertained whether the information sought was in fact necessary for the exercise of freedom of expression (ibid., § 159). In the present case, the registered purpose of each applicant association specified their mission to inform the public about the environmental and health hazards of the Cigéo project. The contested information, which concerned precisely those risks and hazards, was thus directly related to their freedom to impart information.

87. As to the second criterion, relating to the nature of the information, it must be determined whether the information, data or documents to which access was sought met a public-interest test (ibid., §§ 161-63). In the present case, the information at issue was directly related to the discussions on the environmental and health risks posed by the Cigéo project, which involved the delivery, handling and burying on the Bure site of large quantities of high-level and long-lived radioactive waste that posed a major risk to public health and the environment. There is therefore no question that such information met the public-interest test.

88. As regards the third criterion, the Court has emphasised that it attaches particular importance to the applicant association's watchdog role. This is especially true of non-governmental organisations, which exercise such a role not only when reporting on matters of public interest (ibid., § 166), but also when encouraging the authorities to make information on such matters available to the public. This is the situation of the applicant associations in the present case, particularly as they have received official

approval under domestic law to conduct their activities in the environmental protection field.

89. As regards the fourth criterion concerning the availability of the information at issue, it is, by definition, fulfilled in the present case.

90. It follows from the above considerations that Article 10 of the Convention is applicable and the Government's objection as to the incompatibility of the complaint *ratione materiae* with that provision must be dismissed.

2. *Exhaustion of domestic remedies*

91. The Government submitted that the applicants had not exhausted domestic remedies, in that they had failed to submit any grounds of appeal based on the Convention for examination by the Court of Cassation.

92. The applicant associations argued that they had raised their complaint in substance before the domestic courts. Specifically, they submitted that a compensation claim brought by associations seeking to defend public health and protect the environmental integrity of an area and its inhabitants, in response to a breach on the part of a State body of its duty to provide information was, by its nature, also intended to protect the associations' right to information.

93. The Court reiterates that under Article 35 § 1 of the Convention it may only deal with a matter after all domestic remedies have been exhausted. The purpose of that provision is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to it. Thus the complaint to be submitted to the Court must first have been made to the appropriate national courts, at least in substance, in accordance with the formal requirements of domestic law and within the prescribed time-limits (see, among many other judgments and decisions, *Civet v. France* [GC], no. 29340/95, § 41, ECHR 1999-VI).

94. In the present case, it is true that the applicant associations did not rely on the Convention in their appeal on points of law. Their grounds of appeal did, however, refer to ANDRA's failure to comply with its obligation to provide information and did allege a violation of Article L. 542-12 of the Environment Code, which set out that obligation in the following terms: "[ANDRA] ... is responsible for ... informing the public about the management of radioactive waste and participating in the dissemination of scientific and technological knowledge in this sphere." They complained, moreover, about the inadequacy of the review conducted by the Court of Appeal.

95. It would thus appear that, in their appeal on points of law, the applicant associations raised in substance the question of compliance with the right to information on environmental risks, specifically with regard to the procedural guarantees comprised therein. The Court also notes that in

response to the applicant associations' argument, the Court of Cassation verified whether the Versailles Court of Appeal had provided legal justification for its decision in respect of ANDRA's obligation to impart accurate information. The domestic court was therefore given an opportunity to rule on the complaint before it was submitted to the Court, which corresponds to the purpose of Article 35 § 1 of the Convention.

3. *Conclusion on admissibility*

96. The Court notes that this part of the applications is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

(a) The applicant associations

97. The applicant associations emphasised that the core issue in the present case was whether the judicial review of the quality of the information provided by the public agency, pursuant to a self-imposed statutory duty, had been effective. Given what was at stake politically and in terms of health, it was particularly important to provide information to the public, and more specifically to the inhabitants of a region in which it was envisaged to bury radioactive waste. The applicant associations argued that it was the State itself which had imposed on ANDRA an obligation to provide information, and that, for that obligation to be truly effective, the information given by ANDRA on the geothermal potential of the Bure site ought to be subject to review. In their view, if Article 10 made it possible to request the dissemination of information and to sanction a refusal to do so, it necessarily also made it possible to require that the information provided be accurate. If not, the States would be able to disguise a refusal to impart information by providing inaccurate information, which, in the applicant associations' view, would render that requirement totally ineffective. This implied that judicial review of ANDRA's compliance with the obligation to inform ought to examine not only whether information was provided, but also the quality of that information. In the present case, however, the reasoning in the relevant judicial decisions did not show that such a review had taken place.

98. Thus, the fact that ANDRA's partners validated its conclusions, and the agency's own "belligerence" in responding to the applicant associations' criticisms, as noted by the lower courts, were irrelevant when it came to assessing the quality of the information provided. Furthermore, the very nature of that information, on a potential health risk related to the burial of

radioactive waste, rendered nugatory the reasoning by which negligence on ANDRA's part was ruled out in view of the uncertain, possible and future nature of the risk. In that connection, the applicant associations pointed out that the disinformation of the public complained of by them did not concern a minor detail, but rather the risks posed to health and to the environment by unintentional drilling into the stored radioactive waste by future generations, after the site had been forgotten, in a scenario of exploitation of geothermal resources.

99. The applicant associations mentioned three examples which, in their view, revealed ANDRA's failings and the incompetence of the courts. The first concerned the classification of the geothermal resources to be used. ANDRA had chosen the "exceptional value" of the underground resources as the classification to be taken into account when analysing the risk of [non-]contamination of these resources from burying the waste, whereas it was merely the "particular value" classification that was to be taken into account in analysing the risk for the installation's passive safety after closure. Passing one off as the other was disinformation. The second example concerned the geothermal interest and exploitability of the Bure site. They alleged that ANDRA had provided an inaccurate and varying assessment of the geothermal resources in the vicinity of the Bure site, describing them first as "low-level" and then as "negligible", only to concede that the term initially chosen had been misleading. Those contradictions in its communications had been part of the breach of its duty to provide information. The applicant associations also noted that the domestic courts had not taken into account either the fact that the chairman of the National Evaluation Committee had acknowledged this discrepancy in presenting the Bure site's geothermal potential at the meeting of the local information and monitoring committee for the Bure laboratory on 6 March 2014, or the fact that GeoWatt had shown in 2013 that it was already possible to exploit the Bure site's geothermal energy. The third example concerned the extent of the risk entailed by drilling into the radioactive waste burial chamber: ANDRA had announced that studies had shown that there was no risk, but the Institute for Radiation Protection and Nuclear Safety had contradicted this, indicating that specific analysis had yet to be conducted. The applicant associations noted that, once again, the domestic courts had made no criticism on this point.

100. The applicant associations argued that the purpose of their civil action for damages against ANDRA had been to have the information provided to the public rectified, in order to protect the exercise not only of the right to freedom of expression but also of the right to respect for private and family life and the home, since members of the public were asking whether it was safe to settle with their families on a site where radioactive waste was buried if the long-term geothermal risk had not been properly assessed. They emphasised that they were not asking the Court to prevent

the implementation of the Cigéo project at Bure, to put an end to storage projects in France, or to rule on the Bure site's geothermal potential, but rather to find that, first through ANDRA and then through the domestic courts, the national authorities had disseminated false information amounting to non-communication of information, and had thereby infringed the applicant associations' fundamental rights.

101. Lastly, the applicant associations rejected the Government's argument that the disinformation could, if necessary, be corrected through administrative appeals against future licences for implementation of the Cigéo project. They emphasised that the right to information had to be respected, and related shortcomings punished, in good time; future appeals might be too late, particularly in a matter as sensitive and dangerous as the burial of radioactive waste.

(b) The Government

102. The Government reiterated their argument that the applicant associations were in fact seeking to have the domestic dispute re-examined by the Court. In the Government's submission, the associations' complaints consisted mainly in challenging ANDRA's assessment of the geothermal potential of the Bure site and the domestic courts' findings that that assessment had not been incorrect.

103. The Government then argued, first, that the summary report on the 2008 geological study had been made public and that ANDRA had responded in 2013 to the formal notice served on it by the applicant associations. Noting that the applicant associations considered that ANDRA's communication had contained disinformation, they pointed out that the Court had never ruled that the obligation to impart information could be regarded as unmet simply because that information was disputed. It appeared from the Court's case-law that the decisive factor in finding a violation was whether the information and documents relevant to the decision-making process had been communicated, without their content being assessed by the Court. Secondly, the Government emphasised that the information published by ANDRA had fed into the public consultation on the Cigéo project, and had been commented on by the Nuclear Safety Authority, the Institute for Radiation Protection and Nuclear Safety and the National Evaluation Committee, and discussed with civil society as part of a major public consultation organised in 2013.

104. In the Government's view, it followed from the Court's case-law that the individuals concerned had to be able to appeal against any decision, act or omission where they considered that insufficient weight had been given to their interests or submissions in the decision-making process. That did not mean that the Convention guaranteed a right to review, by a court, of the accuracy of technical information contained in reports and expert opinions; this would be tantamount to requiring that court to settle a

technical debate without having the necessary scientific expertise to do so. Its review could cover only manifest and gross errors, not a debate that it was for scientists and decision-makers to settle.

105. In any event, the Government submitted that judicial review had been carried out in the present case. First, the Court of Appeal had ruled on the action for damages against ANDRA, holding that the existence of a disagreement with the applicant associations was not evidence of negligence on its part, and noting that its institutional "partners" – the Nuclear Safety Authority, the Institute for Radiation Protection and Nuclear Safety and the National Evaluation Committee – had confirmed ANDRA's assessment. In the course of its examination, the Court of Appeal had reviewed the information provided by ANDRA, comparing it with that submitted by the applicant associations and with the assessment by ANDRA's partners. Secondly, the Court of Cassation had reviewed the legality of the Court of Appeal's decision by checking whether it had applied the rules relating to the burden of proof and by assessing its reasoning in the light of the appellants' arguments. Thirdly, the proceedings before the lower courts had given rise to numerous exchanges of documents between the parties and each party's arguments had been debated in adversarial proceedings.

106. In conclusion, the Government observed that the fact of ANDRA's dissemination of information, and of the latter's content, would be subject to public scrutiny during the participation procedures that would precede the issuing of the licences required for the construction and operation of the Cigéo centre; it would then, if necessary, be subject to review by the administrative courts, which would have jurisdiction to quash the decision and award damages, in the course of any appeals that might be lodged against those licences.

2. *The Court's assessment*

107. The Court has reiterated in paragraphs 78 and 79 above that, while Article 10 of the Convention does not afford a general right of access to information held by the authorities, it may, to some extent and under certain conditions, guarantee such a right and an obligation on the authorities to impart information. As the judgment in *Cangı v. Turkey* (no. 24973/15, §§ 30-37, 29 January 2019) illustrates, that also applies to access to information concerning projects whose implementation is liable to have an impact on the environment.

108. In the Court's view, the right of access to information would be devoid of substance if the information provided by the competent authorities were dishonest, inaccurate or even inadequate. Indeed, respect for the right of access to information necessarily implies that the information imparted is reliable, particularly where this right stems from a legal obligation on the State. The effectiveness of this right therefore requires that in the event of a related dispute, the persons concerned should

have access to a remedy enabling the content and quality of the information provided to be reviewed in adversarial proceedings. The Court reiterates in this connection that the object and purpose of the Convention, as an instrument for the protection of human rights, requires that its provisions must be interpreted and applied in a manner which renders its rights practical and effective, not theoretical and illusory (see, in particular, *Magyar Helsinki Bizottság*, cited above, § 121, and *Soering v. the United Kingdom*, 7 July 1989, § 87, Series A no. 161, to which it refers).

109. Access to such review is particularly important in the case of information concerning a project presenting a major environmental risk. This is especially so with regard to nuclear risk, which, if it were to materialise, has the potential to affect several generations. There is an undeniable direct link between the geothermal potential of the Bure site addressed in ANDRA's impugned report and the nuclear risk posed by the Cigéo project. Indeed, the "Safety Guide concerning the disposal of radioactive waste in a deep geological formation" issued by the Nuclear Safety Authority states that sites in areas with geothermal potential are inappropriate for this purpose, since they are likely to be subject to test drilling for geothermal purposes once the memory of the radioactive disposal has been lost (see paragraph 18 above).

110. In the present case, the applicant associations brought an action against ANDRA seeking compensation for the damage stemming from its alleged culpable failure to comply with its obligation to inform the public. Although their action was declared inadmissible at first instance, it was declared admissible on appeal in respect of the associations Burestop 55, ASODEDRA, Fédération Réseau Sortir du Nucléaire and Les Habitants vigilants du Canton de Gondrecourt, and the CEDRA 52 collective.

111. Following adversarial proceedings in which the applicant associations were able fully to plead their case, the Versailles Court of Appeal concluded that no negligence had been made out.

112. The Court of Appeal ruled, first, that ANDRA had rightly argued that the results of its work had been approved by all its institutional partners, referring for that purpose to the opinions issued by the Nuclear Safety Authority, the Institute for Radiation Protection and Nuclear Safety and the National Evaluation Committee (see paragraph 30 above). The Government have specified that the Nuclear Safety Authority is an independent administrative authority, which monitors nuclear safety and radiation protection on behalf of the State; the Institute for Radiation Protection and Nuclear Safety is a public body of an industrial and commercial nature (*établissement public à caractère industriel et commercial*) placed under the supervision of the Ministers for Defence, the Environment, Industry and Research and Health, which provides technical and operational support to the Nuclear Safety Authority and performs missions pertaining to the safety of nuclear facilities and nuclear waste; the

National Evaluation Committee, composed of twelve experts and qualified individuals appointed in equal numbers by Parliament and the Government, is responsible for preparing an annual assessment report on developments in research and studies relating to the management of nuclear materials and waste.

113. The Court of Appeal further held that the divergence of opinion on the technical aspects discussed was insufficient in itself to conclude that ANDRA had been incompetent, negligent or biased in the position that it had put forward, and that the fact of issuing, in the wake of in-depth studies, conclusions favourable to Cigéo's construction could not be wrongful *per se*.

114. The Court notes that the applicant associations were able to challenge the appellate judges' findings by lodging an appeal on points of law against the judgment of the Versailles Court of Appeal. The Court of Cassation found, for the reasons set out above, that the Court of Appeal had provided legal justification for its decision.

115. The Court concludes from all the foregoing considerations that five of the six applicant associations – Burestop 55, ASODEDRA, Fédération Réseau Sortir du Nucléaire, Les Habitants vigilants du Canton de Gondrecourt and the CEDRA 52 collective – were able to lodge appeals with the domestic courts, enabling them, in the framework of fully adversarial proceedings, to secure effective review of ANDRA's compliance with its statutory duty to provide the public with information on the management of radioactive waste, relating, in this particular case, to the content and quality of the information communicated by ANDRA concerning the geothermal potential of the Bure site. Admittedly, the reasoning of the appellate court's judgment of 23 March 2017 is not above criticism. The Court considers that it would have been preferable for the appellate courts to have substantiated more fully their response to the applicant associations' challenge in respect of the reliability of the information in ANDRA's summary report of 21 July 2009 indicating that the geothermal resources in the relevant area were of a low level. In the particular circumstances of the case, however, this observation is insufficient to call into question the finding that the five above-mentioned associations had access to a remedy that met the requirements of Article 10.

116. It follows that there has been no violation of Article 10 of the Convention in respect of the associations Burestop 55, ASODEDRA, Fédération Réseau Sortir du Nucléaire, Les Habitants vigilants du Canton de Gondrecourt and the CEDRA 52 collective.

117. As to the association MIRABEL-LNE, the Court has already found that the fact that its appeal was declared inadmissible by the Versailles Court of Appeal amounted to a violation of Article 6 § 1 (see paragraph 73 above). It therefore considers it unnecessary to examine whether that

circumstance constituted a breach by that court of the procedural limb of Article 10 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

118. 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

119. The applicant associations each claimed 3,000 euros (EUR) in respect of non-pecuniary damage, that is, a total of EUR 18,000.
120. The Government "consider[ed] that the amount claimed in respect of non-pecuniary damage was not excessive".
121. The Court observes that it has found a violation of the Convention solely in respect of the association MIRABEL-LNE. Taking note of the Government's position, it awards that association the amount claimed in respect of non-pecuniary damage, namely EUR 3,000.

B. Costs and expenses

122. The applicant associations claimed EUR 16,277.94 in respect of the costs and expenses incurred in the proceedings before the domestic courts, and provided supporting documents corresponding to that amount. They made no claim in respect of the costs and expenses incurred before the Court.
123. The Government observed that the applicant associations had submitted several invoices in support of their claim. They considered, however, that the amount claimed was excessive and that, having regard to the circumstances of the case, the sum of EUR 10,000 would be reasonable.
124. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, it points out that it has found a violation of the Convention solely in respect of the association MIRABEL-LNE, which is therefore the only applicant association entitled to claim reimbursement of its costs and expenses. The Court also notes that the applicant associations have not specified whether and in what way payment of the costs and expenses was divided among them. It also notes that while some of the invoices submitted are addressed to all six applicant associations, others are addressed to the Fédération Réseau Sortir du Nucléaire alone. Having regard to these circumstances and to the Government's position, the

Court considers it reasonable to award the association MIRABEL-LNE one-sixth of the amount claimed in respect of costs and expenses, that is, EUR 2,713, plus any tax that may be chargeable.

C. Default interest

125. The Court considers it appropriate that the default interest rate 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, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the association MIRABEL-LNE;

4. *Holds* that there has been no violation of Article 10 of the Convention in respect of the associations Burestop 55, ASODEDRA, Fédération Réseau Sortir du Nucléaire, Les Habitants vigilants du Canton de Gondrecourt and the CEDRA 52 collective;

5. *Holds* that it is not necessary to examine the complaint under Article 10 of the Convention as raised by the association MIRABEL-LNE;

6. *Holds*
   (a) that the respondent State is to pay the association MIRABEL-LNE, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
   (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (ii) EUR 2,713 (two thousand seven hundred and thirteen euros), plus any tax that may be chargeable to the applicant associations, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

7. *Dismisses* the remainder of the claim for just satisfaction.

Done in French, and notified in writing on 1 July 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	Síofra O'Leary President