



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

THIRD SECTION

CASE OF KEARNS v. FRANCE

(Application no. 35991/04)

JUDGMENT

STRASBOURG

10 January 2008

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

In the case of Kearns v. France,

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

Boštjan M. Zupančič, *President*,

Jean-Paul Costa,

Elisabet Fura-Sandström,

Alvina Gyulumyan,

Egbert Myjer,

David Thór Björgvinsson,

Isabelle Berro-Lefèvre, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 6 December 2007,

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

PROCEDURE

1. The case originated in an application (no. 35991/04) 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”) by an Irish national, Ms Karen Kearns (“the applicant”), on 6 October 2004.

2. The applicant was represented by Mr T. Haas, of the *Conseil d’Etat* and Court of Cassation Bar. The French Government (“the Government”) were represented by their Agent, Mrs E. Belliard, Director of Legal Affairs at the Ministry of Foreign Affairs.

3. On 7 February 2006 the Court decided to give priority to the application and to give notice to the Government of the applicant’s complaint under Article 8 of the Convention. Under Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. In a letter of 7 April 2006 the Irish Government indicated that they did not intend to exercise their right to intervene in the proceedings.

5. On 12 September 2006 the President granted a request by Mr Byrski for leave to intervene in the proceedings. His observations were submitted on 24 October 2006.

6. On 20 September 2006 the President decided to invite the adoptive parents to submit written comments. No reply has been received to the letter they were sent to that effect on 25 September 2006.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1966 and lives in Dublin. She is married to T.

8. On 8 February 2002 she went to Seclin Hospital, in France, together with her mother and a French lawyer, to request anonymous registration of the forthcoming birth of her child (*accouchement sous X*).

9. She was admitted to the maternity ward on 17 February 2002, and on 18 February 2002 she gave birth to a girl, K., from an extramarital relationship with Mr Byrski.

10. On 19 February 2002 she had an interview lasting half a day with the social services, in the presence of her mother and a nurse who had been asked to act as an interpreter by the hospital. On the same day she signed a record of the child's placement in State care in accordance with Article L. 224-5 of the Social Action and Families Code, handing over a folder intended for the child, which contained a letter, photographs and administrative documents.

11. In the record she indicated that she wished to have the child taken into State care, to request secrecy and to give her consent to adoption under Article 348-3 of the Civil Code. She stated that the child was born out of wedlock and was not recognised by the father.

12. The section entitled "Reasons for the placement" contained the following details:

"[The applicant] wishes to keep secret the reasons why she is giving her child up for adoption. She would prefer to hand us the attached documents, which will be released to the child at her request on reaching the age of majority (letter, photos, official documents). Secrecy has been requested purely to 'protect her baby' from the violent and unbalanced biological father."

13. The section entitled "Information on the placement" stated:

"We have informed her of the following: ...

(3) Time-limits and conditions for return of the child:

– a child who is claimed back **within a period of two months** by the parent who entrusted the child to the Child Welfare Service will be returned to that parent without any further formalities (*Article L. 224-6, paragraph 2, of the Social Action and Families Code*).

– if the child has a second parent **who did not entrust him or her** to the service and who claims the child back **within a period of six months**, the child will be returned to that parent without any further formalities (*same Article*).

– **once these periods have expired (two months** if the sole parent or both parents entrusted the child to the service; **six months** if the second parent did not entrust the child to the service), an application for judicial review of the child's placement in State care may be lodged, **within thirty days** from the date of the formal registration, with the *tribunal de grande instance* (Article L. 224-8 of the *Social Action and Families Code*).

– **beyond these time-limits:**

* if the child has been placed for adoption, any application to have the child returned will be inadmissible (Article 352 of the Civil Code) ...

(6) **Conditions for withdrawal of consent to adoption** (Article 348-3, paragraphs 2 and 3, of the Civil Code)

We have given her the following:

– a notice setting out the effects of placement in State care and of consent to adoption and the conditions for recovery of the child and withdrawal of consent;

– a model letter requesting the return of the child and/or withdrawing consent to adoption, if consent has been given.”

14. On the same day (19 February 2002) the applicant gave her consent to the child's adoption. The form of consent stated, *inter alia*:

“I ... certify that I have been informed:

...

2. about the effects of consent to adoption, namely:

– that the placement is secret,

– that I forfeit all my rights over the child,

– that placement for adoption constitutes a bar to any recognition, declaration of filiation or application for recovery.

3. that this document will become FINAL after a period of TWO MONTHS, on 20 April 2002, and that during this period the child may be returned to me in accordance with the prescribed procedures for withdrawal of consent (Article 348-3, paragraphs 2 and 3, of the Civil Code).

I hereby declare that I formally consent to the adoption of my child ..., leaving the choice of the adopter to the Child Welfare Service.

I acknowledge that I have received:

– a notice setting out the time-limits and conditions for the return of my child,

– a model letter for withdrawal of consent to adoption and to the record of the child's placement in State care.”

15. On 20 February 2002 the applicant had a further interview lasting half a day with the social services, in the presence of a doctor acting as an interpreter, during which, at her request, various matters relating to the record signed the previous day were discussed.

16. On 7 May 2002, after approval had been given by the Family Council, the chairman of the Nord *département* council, as the official guardian of children in State care, placed K. in the care of Mr and Mrs L.-B. with effect from that date with a view to her full adoption.

17. In the meantime, Mr Byrski, the child's biological father, had applied to the Dublin Circuit Family Court for recognition of his rights over the child. In decisions of 19 July and 14 and 28 August 2002 the Circuit Family Court directed that the adoption process in France should not proceed any further, that the name and a photograph of the child were to be sent to Mr Byrski and that its decisions were to be forwarded to the Nord *département* council and the French social services.

18. On 25 and 26 July 2002 the applicant went to the hospital's maternity ward and subsequently to the French social services, seeking the return of the child. According to a note drawn up by the social services, her request was based on two reasons: firstly, the biological father had learned of the child's birth in the meantime and had brought an action in Ireland, and secondly, she had managed to persuade her husband to recognise the child. Her request was refused because the two-month time-limit for withdrawing consent had expired.

19. The applicant then applied to the Lille *tribunal de grande instance*, seeking the annulment of the decision to give the child up and an order for her return. She submitted that the consent she had given on 19 February 2002 had been invalid on account of the family pressure exerted on her and because she had not realised the consequences of registering the birth anonymously, since the process had been explained to her without an interpreter being present. She argued that French law contravened Articles 13 and 14 of the Convention.

20. The child's biological father, Mr Byrski, intervened in the proceedings.

21. In a judgment of 31 October 2002 the court dismissed the applicant's claims, holding as follows:

"In support of her application for the annulment of the decision to give up the child born on 18 February 2002 and for the child's return, Ms Kearns alleges that an error was committed as to the meaning and scope of the document of 19 February 2002.

Ms Kearns, an Irish national living and working in Dublin, came to the maternity ward in Seclin to give birth on 18 February 2002. On that occasion she expressed the wish for her admission and her identity to be kept secret.

The exercise by any woman of this right, which is enshrined in Article 341-1 of the Civil Code and which the legislature has to date had no intention of reconsidering, is

governed by the provisions of Article L. 222-6 of the Social Action and Families Code, as amended by the Act of 22 January 2002.

It appears from the evidence before the court ... that at least two lengthy interviews were held in order to explain to this woman the conditions and effects of anonymous registration of a birth. These interviews took place in the presence of English speakers, and Ms Kearns, who chose to come to France to give birth, cannot expect the social services to have offered anything more in this respect, particularly not the presence of an official interpreter, which is not provided for or required by any statutory instrument. Furthermore, it appears from the proceedings ... and from the written submissions summarising her counsel's address ... that Ms Kearns was taken to hospital by a lawyer; she had therefore clearly sought legal advice prior to the birth.

Accordingly, no matter what psychological state the applicant may have been in, like any woman opting to give birth in these circumstances, it appears that Ms Kearns was nevertheless fully aware of both the immediate and the future implications of her actions and decisions. She thus acted quite consciously in having the birth registered anonymously and giving the child up to the social services to be taken into State care, and there are no grounds for arguing that her intellectual faculties were impaired or that the consent was invalid in any way; moreover, the question of consent is not applicable from a civil-status perspective.

In addition, as regards the formal propriety of the document of 19 February 2002, once a child is entrusted to the social services, the latter assume a number of obligations, including the provision of information ... It appears from the record of the child's placement, which contains entries whose existence is not disputed, that the social services fulfilled their obligation to provide information on a child's placement in State care and the ensuing legal effects. Such information was, moreover, provided in English, and the notice and model letter requesting the return of the child were indeed given to Ms Kearns. Furthermore, Ms Kearns fully understood the meaning and scope of this information since she left documents for the child in the event that the latter expressed the wish to discover her origins at a future date.

Ms Kearns clearly expressed her wish that the child should never be able to have legal ties to her. Moreover, she did not withdraw her consent within the two-month period. It should be noted in this connection that this right is strictly personal; accordingly, no action by a third person may be treated as an action to withdraw consent, that being the sole prerogative of the mother, or interrupt the relevant period.

Accordingly, there are no grounds for declaring null and void the record of 19 February 2002, which served as an entirely valid basis for the placement in State care (first provisionally and later with final effect) of the child born on 18 February 2002 with no established parentage ...

Since the mother did not apply for the return of the child within two months after giving her up, the child, who has no legally established parentage, was able to be placed with foster parents by the State authorities with a view to her adoption under Article 351 of the Civil Code.

Such placement for adoption, by virtue of the provisions of Article 352 of the Civil Code, constitutes a bar not only to the return of the child to the mother but also to any declaration of filiation or recognition. The first ground of appeal must therefore be declared ineffective.

Ms Kearns further alleges a violation of Articles 13 and 14 of the European Convention on Human Rights.

As stated above, Ms Kearns gave birth ... while wishing to keep the birth and her identity secret, a right enshrined in Article 341-1 of the Civil Code and given effect by the Social Action and Families Code.

More generally, these Articles govern the conditions for giving up a child, for consent to adoption or for anonymous registration of a birth, as well as the conditions and procedures applicable in the event of repudiation and/or withdrawal of any of these measures.

They strike a delicate balance between the rights of a mother, which the legislature has to date had no intention of reconsidering, to give birth anonymously with the consequences that entails, and the rights of the foster parents and of the child, whose rights are now framed in such a way as to allow him or her access to more information, if he or she so desires, but in whose interests stability and certainty, both psychological and legal, must be sought, if only through the shortness of the time within which the natural parents may avail themselves of the appropriate procedures.

The instant case thus cannot be said to involve any discrimination or deprivation of the enjoyment of a right secured to the mother or the child by the European Convention on Human Rights, or indeed our national law, within the meaning of Article 14 of the Convention. Similarly, no matter how short they are, time-limits do exist in French law for bringing an action in the ordinary courts, constituting, within the meaning of Article 13 of the Convention ..., an effective remedy before a national authority independent of the administrative authority that may be required to rule on an application for the return of a child or to approve an adoption.”

22. The applicant appealed. In a judgment of 22 September 2003 the Douai Court of Appeal set aside the first-instance judgment. After reiterating the content of the record of 19 February 2002, and in particular the information it provided, the court held:

“Paragraph 3 of the section on information thus expressly mentions the existence of two time-limits for the child’s return without any further formalities, one being two months (the only possible limit that could apply in the instant case), the other being six months, where the second parent has not entrusted the child to the social services.

This six-month time-limit is mentioned on two further occasions, firstly in relation to the right to have the child returned to the second parent and secondly in indicating that even after the expiry of the two-month and six-month periods, a court action may still be brought.

This information could have misled Ms Kearns ... since in reality the six-month time-limit applicable under Article L. 224-6 of the Social Action and Families Code in the circumstances referred to in Article L. 224-4 did not apply in the instant case, there being no established paternity as the mother had registered the birth anonymously, and the placement therefore came under point (1) of Article L. 224-4.

Ms Kearns, an Irish national who is a native English speaker and does not speak French, could not have known the consequences in French law of anonymous registration of the birth, in terms of her rights and those of the biological father, and

the information given was in no way capable of enlightening her in a clear and precise manner.

Having been informed of the existence of a six-month time-limit where ‘the child has a second parent who did not entrust him or her to the service’, she may legitimately have thought, in the light of the information set out in the record, that this time-limit was applicable in her case since she had on several occasions notified the local health and social services department of the existence of a biological father who had not been informed of the placement procedure.

It will be observed that there is no mention in the record that an interpreter was present when it was signed and that it has not been disputed that a member of the maternity ward staff assisted with the translation and the explanation in English of the information given in French to Ms Kearns ... However, a translation of this nature, which was provided by a person who used English only occasionally and did not have specific legal knowledge, and which, moreover, was based on particularly ambiguous information as to the time-limits, did not enable Ms Kearns ... to have access to proper information about her rights regarding the procedures for withdrawing consent.

It therefore appears that the information provided to the appellant concerning the right to have the child returned was inaccurate or at least particularly ambiguous, and was set out in a pre-printed document not specially adapted to the procedure of anonymous birth registration but designed for use in any of the circumstances covered by Article L. 224-4 of the Social Action and Families Code for the taking of a child into State care; that reference was made to a six-month time-limit not applicable in her case; and that, moreover, being a native English speaker, the mother was not effectively informed of the procedures for the return of her child and of the strict two-month time-limit that applied in her case.

Furthermore, it has not been shown in any way that Ms Kearns ... otherwise received any clear information before the record was signed as to her right to recover the child.

The note by Ms F. – who also drew up the record in issue – besides having no evidential value, since it was written by a party to the proceedings, does not contain any clarification as to the information given to Ms Kearns ... about the time-limit for withdrawing consent.

Similarly, the fact that Ms Kearns ... was in contact with a French lawyer prior to the birth does not mean that she received precise information from him about the exclusive nature of the two-month time-limit ...

Ms Kearns’ belief ... in the possibility of recovering the child within a six-month period is corroborated by the request she made in person on 25 and 26 July 2002 to the Nord health and social services department, citing this time-limit, and by the subsequent letters from her lawyer, which also state that his client thought that she could take her child back within such a period.

Having regard to all these considerations, it appears that Ms Kearns ... placed her child in State care while believing – legitimately, in view of the ambiguous information she had received when signing the record of the placement – that she could take her back within a period of six months and that this time-limit also applied to Mr B., who had, moreover, instituted proceedings in Ireland on 9 April 2002.

This error as to the time-limit for the return of the child concerns a significant element of her consent to the child's placement in State care, especially as the provisions of Article L. 224-5 of the Social Action and Families Code require precise information on the subject to be given to the mother.

In these circumstances, the application for the record of the child's placement of 19 February 2002 to be declared null and void must be allowed.

... seeing that the handing over of the child to the State authorities was rendered void by a lack of true consent affecting the validity of the record drawn up on 19 February 2002, the child's placement in State care is to be retrospectively annulled and cannot therefore have any legal effect.

Accordingly, the application for the child to be returned to Ms Kearns ... should be allowed, without there being any need to address the subsidiary arguments she submitted in support of that application.

Pursuant to Article 334-8 of the Civil Code, parental ties shall be established between Ms Kearns ... and the child to whom she gave birth in the maternity ward of Seclin Hospital on 18 February 2002 and a reference to this judgment shall be entered in the register of births, deaths and marriages for the town of Seclin."

23. In a letter of 24 September 2003 the applicant's lawyer asked the prefect to enforce the judgment and to return the child to her mother. No action was taken on this request.

24. The prefect for the *département* of Nord appealed on points of law, arguing that in the absence of recognition by the mother of the child to whom she had given birth anonymously, it was not necessary to obtain her consent for the child to be taken into State care.

25. In a judgment of 6 April 2004 the Court of Cassation allowed the appeal, holding as follows:

"[Article L. 224-4, point (1), of the Social Action and Families Code] provides that children whose parentage has not been established or is unknown and who have been entrusted to the Child Welfare Service for more than two months are deemed to have been taken into State care.

On 18 February 2002 Mrs T. (née Kearns) gave birth anonymously. On 19 February 2002 a record of the child's placement in State care with the Child Welfare Service was drawn up in accordance with Article L. 224-5 of the Social Action and Families Code. On 7 May 2002 the child was placed for adoption after the Family Council for Children in State Care had given its approval on 25 April 2002. On 25 July 2002 Mrs T. unsuccessfully sought to have the child returned to her. In applications of 22 August and 10 September 2002 she brought proceedings against the prefect of the *département* of Nord, seeking the return of the child.

In allowing her claim, the Court of Appeal held that the child's placement with the State authorities was rendered void by a lack of true consent affecting the validity of the record drawn up on 19 February 2002, seeing that when the record was signed Mrs T. had received only ambiguous information about the period within which she could take her child back.

In so holding, despite the fact that in the absence of recognition, the child's parentage was not established, such that Mrs T.'s consent was not required when the child was taken into care ..., the Court of Appeal breached the provision cited above."

26. The Court of Cassation therefore quashed and annulled the Court of Appeal's judgment in its entirety and, applying Article 627, paragraph 2, of the New Code of Civil Procedure (by which it may put an end to the dispute by applying the appropriate legal rule), dismissed the applicant's claims.

27. The full adoption procedure, which had been suspended, was resumed by Mr and Mrs L.-B. In a judgment of 17 June 2004 the Lille *tribunal de grande instance* allowed their application and made a full adoption order in respect of the child.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW AND PRACTICE

A. Domestic law

1. Legislation

28. The history and development of the system of anonymous registration of births in France is set out in *Odièvre v. France* ([GC], no. 42326/98, §§ 15-16, ECHR 2003-III).

(a) Social Action and Families Code (as resulting from Law no. 2002-93 of 22 January 2002)

29. The following provisions of the Social Action and Families Code are relevant to the present case:

Article L. 224-4

"The following shall be taken into State care:

(1) children whose parentage is not established or is uncertain and who have been entrusted to the Child Welfare Service for more than two months; ..."

Article L. 224-5

"Where a child is entrusted to the Child Welfare Service in the circumstances referred to in Article L. 224-4, points (1), (2), (3) and (4), a record shall be drawn up.

It shall mention that the parents in respect of whom the child's filiation has been established, the child's natural mother or natural father or the person handing the child over have been informed about:

- (1) the measures introduced, in particular by the State, the local authorities and the social-security bodies, to help parents to raise their children themselves;
- (2) the rules governing placement in State care in accordance with this Chapter;
- (3) the time-limits and conditions subject to which the child may be taken back by the father or mother;
- (4) the possibility of leaving behind any information concerning the health of the father and mother, the child's origins and the reasons for which and circumstances in which the child was placed with the Child Welfare Service.

Furthermore, where the child is entrusted to the service by the father or mother in accordance with points (2) or (3) of Article L. 224-4, the parent or parents concerned must be asked to consent to the child's adoption; such consent shall be noted in the record, which must also mention that the parents have been informed of the time-limits and conditions in which they may withdraw their consent, in accordance with the second and third paragraphs of Article 348-3 of the Civil Code."

Article L. 224-6

"The child shall be deemed to have been provisionally taken into State care on the date on which the record referred to in Article L. 224-5 is drawn up. Guardianship arrangements shall be made with effect from the date of such declaration.

However, within a period of two months from the date of the provisional placement in State care, the child may be returned immediately and without any further formalities to whichever of the parents entrusted him or her to the service. This period shall be extended to six months, in the circumstances specified in Article L. 224-4, point (3), for whichever parent did not entrust the child to the service.

Beyond these periods, the decision to agree to or refuse the return of a child in State care shall, subject to the provisions of Article 352 of the Civil Code, be taken by the official guardian, with the agreement of the Family Council. In the event of a refusal, the persons concerned may apply to the *tribunal de grande instance*."

(b) Civil Code

30. The relevant provisions of the Civil Code are worded as follows:

Article 347

"The following may be adopted:

- (1) children in respect of whom the mother and father or the Family Council have validly consented to adoption;
- (2) children in State care;
- (3) children declared abandoned in the circumstances provided in Article 350."

Article 348-3

“Consent to adoption shall be given before the senior registrar of the district court within whose jurisdiction the home or place of residence of the person giving the consent is situated, or before a French or a foreign notary, or before French diplomatic or consular officials. It may also be received by the Child Welfare Service if the child has been entrusted to the service.

Consent to adoption may be withdrawn within a period of two months. Withdrawal of consent shall be effected by means of a registered letter with recorded delivery, addressed to the person or the service that received the consent. The handing over of the child to the parents on request, even a verbal request, shall also be treated as proof that consent has been withdrawn.

If, on the expiry of the two-month period, consent has not been withdrawn, the parents may still request the return of the child, provided that the child has not been placed for adoption. If the person who has received the child refuses to give him or her back, the parents may apply to the court, which shall determine, having regard to the child’s interests, whether the return of the child should be ordered. The child’s return shall invalidate the consent to adoption.”

2. Case-law

31. The Court of Cassation takes the position that, where a mother gives birth anonymously, there are no established parental ties between her and the child and that, accordingly, her consent to adoption is not required.

32. Thus, in a judgment of 5 November 1996 (*Bulletin* 1996 I no. 368, p. 259) in a case concerning a request for the return of an anonymously registered child born to a minor, the Court of Cassation quashed the judgment of the Court of Appeal, which had annulled the record of the child’s placement with the social services on the ground that the mother was under age and had not been assisted by a person exercising parental responsibility. It held as follows:

“In so holding, despite the fact that in the absence of recognition, parental ties had not been established, so that it was not necessary to obtain Ms Y’s consent when the child was entrusted to the Child Welfare Service, the Court of Appeal breached the provision cited above [Article 61, point (1), of the Family and Welfare Code].”

33. Conversely, in a recent case in which the mother had given birth anonymously but the biological father had recognised the child before the birth, the Court of Cassation, relying in particular on the New York Convention on the Rights of the Child, quashed and annulled the judgment of the Court of Appeal, which had declared inadmissible the father’s application for the return of the child. It gave the following reasons:

“... in so holding, despite the fact that, since the child had been identified by Mr X ... on a date prior to the consent to adoption, the child’s paternity had been established with effect from the date of the birth as a result of this prenatal recognition, so that the Family Council for Children in State Care, which had been informed of the recognition, could no longer ... validly consent to the child’s adoption, consent being

the sole prerogative of the biological father, the Court of Appeal, disregarding the child's right to know its declared father, breached the provisions cited above." (Court of Cassation, First Civil Division, 7 April 2006, *Petites affiches* 14-17 July 2006)

B. International and comparative law

1. International and European law

(a) United Nations Convention on the Rights of the Child

34. Article 21 of this Convention provides:

"States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of childcare, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present Article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs."

(b) Convention of 29 May 1993 on Protection of Children and Cooperation in respect of Intercountry Adoption

35. This convention, which is not directly applicable to the present case since it concerns inter-country adoption, provides in Article 4 that the persons whose consent is necessary for adoption must "have been counselled as may be necessary and duly informed of the effects of their consent", and that such consent must have been given freely and expressed or evidenced in writing and must not have been withdrawn. In addition, the consent of the mother, where required, must have been given only after the birth of the child.

(c) European Convention on the Adoption of Children

36. This Council of Europe convention came into force on 24 April 1968. France has signed it but has not ratified it. Article 5 provides:

“1. Subject to paragraphs 2 to 4 of this article, an adoption shall not be granted unless at least the following consents to the adoption have been given and not withdrawn:

(a) the consent of the mother ...

4. A mother’s consent to the adoption of her child shall not be accepted unless it is given at such time after the birth of the child, not being less than six weeks, as may be prescribed by law, or, if no such time has been prescribed, at such time as, in the opinion of the competent authority, will have enabled her to recover sufficiently from the effects of giving birth to the child.”

37. According to the explanatory report, the object of paragraph 4 is to avoid premature adoptions to which mothers give their consent as a result of pressure exerted before the birth of the child or before their physical health and psychological balance have been restored.

38. The convention is currently undergoing a revision. Article 5 of the draft revised convention is worded as follows:

“1. Subject to paragraphs 2 to 5 of this article, an adoption shall not be granted unless at least the following consents to the adoption have been given and not withdrawn:

a. the consent of the mother and the father; or if there is neither father nor mother to consent, the consent of any person or body who is entitled to consent in their place; ...

2. The persons whose consent is required for adoption must have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin. The consent must have been given freely, in the required legal form, and expressed or evidenced in writing. ...

5. A mother’s consent to the adoption of her child shall be valid when it is given at such time after the birth of the child, not being less than six weeks, as may be prescribed by law, or, if no such time has been prescribed, at such time as, in the opinion of the competent authority, will have enabled her to recover sufficiently from the effects of giving birth to the child.”

The explanatory report¹ states the following:

“33. Paragraph 2 emphasises that it is essential that the person giving consent has been well informed in advance of the consequences of doing so and that consent is given freely and in writing. ...

38. The object of paragraph 5 is to avoid premature adoptions to which mothers give their consent as a result of pressure exerted before the birth of the child or before

1. CM(2007)44 add, 3 April 2007.

their physical health and psychological balance have been restored after the child's birth.

39. Paragraph 6 contains a definition of the terms 'father' and 'mother'. Given this definition, the consent provided for in this article does not apply to parents of origin when legal affiliation has not been established."

2. Comparative law

(a) Procedures for obtaining the biological parents' consent

39. Most European legal systems provide that consent must be obtained by a judge or notary independently of the placement process. Some countries allow the parents' consent to be obtained by the social services responsible for the child,¹ by the director of the institution in whose care the child is placed² or by the supervisory authority.³

40. As regards the provision of information to the biological parents, some national regulations require adoption agencies to provide information on the legal effects of adoption, the adoption process and the other means of assistance available to them.⁴ In other countries⁵ this obligation falls directly to the judge, who must inform the parents of the legal effects of adoption and of their right to withdraw consent.

(b) Time at which the biological parents' consent is obtained

(i) Period of reflection

41. In order to ensure that the biological parents give their free and informed consent, most European legal systems have introduced a statutory period of reflection after the birth. In a similar manner to Article 5 § 4 of the European Convention on the Adoption of Children (see paragraphs 30-32 above), most legal systems⁶ envisage a period of not less than six weeks, sometimes extending to as much as three months.⁷

42. Some countries simply make the validity of consent subject to "the recovery of the mother after giving birth"⁸ or to the condition that it is given after the birth.⁹ Lastly, the legislation in other countries¹⁰ makes no

1. France.

2. Ukraine Russia.

3. Switzerland, Serbia, Montenegro.

4. France, England, Finland, Belgium.

5. For example, Lithuania.

6. Germany, Belgium, Croatia, Denmark, Finland, Greece, Ireland, Latvia, Luxembourg, Malta, Norway, Poland, Portugal, England, Romania, Serbia, Montenegro, Switzerland and Ukraine.

7. Denmark, Greece, Luxembourg, "the former Yugoslav Republic of Macedonia".

8. Sweden.

9. Russia.

provision for a period of reflection, but “prenatal” consent remains prohibited by law in the vast majority of legal systems.

(ii) Time-limit for withdrawing consent

43. Some countries have instituted a period within which the biological parents may revoke their consent. There is considerable diversity in the legislation of the member States that have provided for this possibility; some systems allow consent to be withdrawn until the adoption order is issued¹ and others until the adoption process has been initiated,² whereas others lay down fixed periods whose length varies from country to country.³ Lastly, in some countries⁴ the biological parents’ consent is irrevocable.

44. The effects of withdrawal of consent likewise vary from one State to another. In countries such as France or Switzerland, where consent may be revoked during a specified period, the withdrawal has an absolute effect in that it puts an end to the adoption process and opens up the possibility of the child’s return. Conversely, in systems where consent may be withdrawn until the adoption order is issued, the withdrawal does not automatically end the process and the courts are required to make a decision on the child’s return on the basis of the child’s best interests.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

45. The applicant alleged a breach of her right to respect for her private and family life as enshrined in Article 8 of the Convention, which provides:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the

1. Austria, France, Italy.

2. Albania, Armenia, Belgium, Denmark, Estonia, Finland, Georgia, Ireland, Lithuania, “the former Yugoslav Republic of Macedonia”, Moldova, Russia, Ukraine. In Poland the biological parents may revise their decision until the expiry of the time allowed for appealing against the adoption order.

3. Bulgaria, Spain, England.

4. France, Hungary, Luxembourg, Portugal, Serbia, Montenegro, Switzerland.

5. Germany, Austria, Hungary (for “open” adoption), Malta.

country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

46. The Government contested that view.

A. Admissibility

47. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

(i) Length of the period allowed for withdrawing consent

48. The applicant submitted that the period of two months within which consent could be withdrawn under the second paragraph of Article L. 224-6 of the Social Action and Families Code was too short and constituted disproportionate interference with the right of the parents and children to be together in a family environment. She contended that the Government's arguments on this point were unconvincing.

49. Although it was in the interests of the child and the child's future adoptive family that the uncertainty surrounding the planned adoption should not persist, the fact remained that an excessively short period for withdrawing consent was harmful both to the child and to the parents. With regard to the child, the painful psychological effects of adoption should not be overlooked, seeing that before reaching adulthood, many children or adolescents experienced the suffering of being abandoned and pursued the aim of restoring contact with their biological parents. Such suffering could only be exacerbated if the child discovered that, a few months after the birth, the natural mother had unsuccessfully sought to take him or her back.

50. With regard to the parents, the state of psychological distress affecting a mother who was compelled to give her child up to the social services for adoption had to be taken into consideration. The applicant pointed out in that connection that commentaries on the Court of Cassation's judgment of 6 April 2004 had, to varying degrees, highlighted the insufficient length of the relevant period. Professor Monéger, for example, had argued that French legislation did not take sufficient account

of the situation of the woman who had given birth¹ and Professor Bicheron had proposed that, without calling the two-month time-limit into question, the legislation should envisage the possibility of allowing consent to be withdrawn outside this time-limit where there had been exceptional circumstances surrounding the pregnancy or birth, provided that this was done within a reasonable period which would have to be defined.²

51. The applicant submitted in conclusion that the two-month period in which she had been entitled to claim her child back could not be regarded as sufficiently long to guarantee her right to respect for her family life.

(ii) Information provided to the applicant

52. In the applicant's submission, the positive measures which the State authorities had to take for the rights guaranteed under Article 8 of the Convention to be effective included making all the necessary arrangements to ensure that a non-French-speaking mother registering a birth anonymously understood the precise implications of her actions. It was therefore unacceptable for the mother not to be given a clear and accurate translation of the legal provisions concerning her, a requirement made even more essential by the technical nature of the legislation.

53. With regard to the present case, she contended that the Government were incapable of proving that she had received sufficient information from the social services. Although the Government had asserted that a welfare officer had translated the gist of the information that should have been provided to her, that in itself was insufficient, seeing that French legislation was anything but straightforward as regards the period within which the biological mother could withdraw consent, as was underlined by Professor Murat's commentary on the Court of Cassation's judgment of 6 April 2004.

54. That being so, the applicant contended that the task of providing information to a foreign mother could not be left to a welfare officer with no indication of possessing the necessary legal knowledge to understand the subtleties of the French legislation himself or herself or sufficient knowledge of English to translate complex legal notions with the clarity and accuracy required to avoid any misunderstanding or ambiguity.

55. Ultimately, the applicant argued, the Government had entirely failed to show that she had been provided with sufficient linguistic assistance to enable her to understand the procedures and time-limits for claiming her child back. Full compliance with this duty to impart information had been particularly essential since the French legislation, as construed by the Court of Cassation, made no provision for any means of redressing a breach of that duty. In that connection she cited a number of articles on legal theory

1. *Revue de droit sanitaire and social* 40 (3), July-September 2004, pp. 692 et seq.

2. *Droit de la famille*, no. 6/2004, June 2004, p. 242.

and commentaries on the Court of Cassation's judgment that were critical of the legislation in question.

56. The applicant submitted that, since there was a consensus that the legislation as it currently stood was flawed, the French authorities should have been particularly attentive to the need to do everything possible to ensure that a foreign, non-French-speaking mother was able to understand precisely her rights and obligations *vis-à-vis* her child once the child had been entrusted to the social services; she concluded that that had not been so in her case, as indeed the Court of Appeal had acknowledged.

(b) The Government

57. As a preliminary remark, the Government stated that they did not dispute the applicability of Article 8 of the Convention to the present case, at least with regard to the right to respect for private life. They also accepted that there had been interference with the applicant's rights, but contended that the interference – in particular, the existence of a two-month time-limit beyond which the parent could no longer seek the return of a child whose placement in State care he or she had requested – satisfied the requirements of foreseeability, legitimacy and necessity for the purposes of Article 8.

(i) Length of the period allowed for withdrawing consent

58. The Government submitted that the interference in issue was prescribed by law. It followed from Articles L. 224-4 to L. 224-6 of the Social Action and Families Code, taken together, that a child whose birth was registered anonymously was provisionally taken into State care on being entrusted to the Child Welfare Service, and could be taken back by the mother without any further formalities during a period of two months. Once that period expired, a full adoption order could be made in respect of the child.

59. The Government emphasised that the interference had pursued the legitimate aim of protecting the rights and freedoms of others, and more specifically had been in the child's best interests. The provisions cited were intended to ensure stability for the child, both legally and psychologically, within a foster home. The child's interests dictated that he or she should quickly be able to enjoy stable emotional relations in a new family and should have the benefit of parental ties, the main reason why the Adoption Reform Act of 5 July 1996 had reduced the time-limit for withdrawing consent from three to two months.

60. The Government submitted that where legal or biological parents relinquished their rights, they forfeited their family life with the child they had abandoned, and where the child was given up the day after being born, as in the instant case, no family life had been established. The child-welfare professionals interviewed in the context of the 1995 report on adoption by Professor Mattei had pointed out that it was in the interests of an abandoned

child to enjoy stable emotional relations within a new family as quickly as possible, an observation borne out by subsequent studies on attachment disorders and their damaging consequences for the child.

61. The legislature had sought to confer on a child's placement for adoption (the point from which the biological parents could no longer claim the child back) the same legal effects as adoption itself in order to make the child's position more stable. The child's right to family life therefore dictated that the time-limit for withdrawing consent should not be excessive. The relevant provisions also sought to protect the right of the adoptive family to lead a stable family life (they referred to *Odièvre*, cited above, § 44).

62. The Government further submitted that the interference in issue had been necessary in a democratic society within the meaning of Article 8 § 2. Citing the Court's case-law (in particular, *Olsson v. Sweden (no. 1)*, judgment of 24 March 1988, Series A no. 130, and *Odièvre*, cited above), they observed that, in striking a fair balance between competing interests, the Court afforded States a certain margin of appreciation and that, in assessing whether or not they had overstepped that margin, it took particular care to ensure that the child's best interests were preserved. In the instant case the Government submitted that, in such a delicate situation as the abandonment of a child by a mother who wished the birth to be registered anonymously, the French legislation attempted to square the various interests at stake: those of the child, the mother and the adoptive family.

63. In assessing the two-month time-limit for withdrawing consent, regard should therefore be had to the absence of pre-existing family life with the biological mother, who had voluntarily given up all family life with her child, to the child's physical and psychological well-being and to the legal and emotional stability desired by the adoptive parents. The time-limit appeared sufficient to enable parents to reflect and to revise their decision if they so desired, especially as the social services provided them with detailed and accurate information about the implications of their actions. The social services had also noted that consent was generally withdrawn either in the first few or in the last few days of the period in question, and that this would remain the case if the period were shortened or extended.

64. Arguing in addition that the period within which consent could be withdrawn under French law was somewhat longer than the period provided for in other legal systems (for example, in Spain, Portugal, Poland, Quebec, Great Britain and Switzerland), the Government concluded that the time-limit satisfied the requirements of Article 8 of the Convention.

(ii) Information provided to the applicant

65. The Government submitted that the applicant, who lived in Ireland and had no ties in France, had made a free and informed choice to go to France to take advantage of the national legislation on anonymous

registration of births and adoption. In Irish law, the principle *mater semper certa est* applied; affiliation was established by the fact of the child's birth. If the applicant had given birth in Ireland, she would have been the child's legal mother without having to recognise her, and the biological father would have been able to assert his rights without any difficulty. It was precisely to avoid that scenario that she had wanted to come to France, in order to keep secret the birth of a child resulting from adultery and to keep her marriage intact, while at the same time excluding the biological father, who was described as "violent and unbalanced" in the record of the child's placement of 19 February 2002.

66. The Government submitted that, contrary to what she had alleged, the applicant, who had been 36 years old at the time, had been entirely aware of the meaning and implications of her actions. She had also been fully informed about the anonymous registration procedure and its practical details. The allegation that the decision had merely been provisional, giving her the chance to overcome temporary problems, was contradicted, in the Government's view, by the fact that, prior to giving birth, she had sought advice from a lawyer, who had taken her to hospital, and that she had taken care to bring documents with her to be handed over to her daughter on reaching the age of majority if she ever wished to know her origins.

67. The Government submitted that, even supposing that the applicant had not been fully aware of her actions before arriving in France, she had in any event received clear and extensive information after the birth about the procedure provided for in Articles L. 224-4 to L. 224-6 of the Social Action and Families Code. That was attested, firstly, by the record of the child's placement in State care and, secondly, by the judgment of the Lille *tribunal de grande instance*, which noted that the applicant had had at least two lengthy interviews with the social services, during which she had been told about the conditions and effects of anonymous registration of the birth. Although she had not had access to an official interpreter, which was not required by French law, she had been assisted by English-speaking staff during the interviews. Furthermore, in his submissions to the Court of Appeal, the prefect of the *département* of Nord had referred to the observation by the social services that the applicant "had difficulty in accepting the idea that her daughter would not be placed with adoptive parents immediately after leaving the maternity ward but would be placed temporarily in a foster home or a nursery for two months. In that connection, it was explained to her at length that the purpose of this procedure was to ensure the best possible preparation for the planned adoption, and also to comply with the statutory two-month time-limit for withdrawing consent, which in her case would expire on 20 April 2002."

68. In the Government's submission, the applicant could not maintain that the social services had failed in their duty to provide information, or that the information imparted, particularly as regards the time-limit for

withdrawing consent, had been ambiguous. Lastly, the Government observed that during the two-month period in question, the social services had not been made aware of any incidents suggesting that the applicant wished to or was going to revise her decision. Nothing had been heard from her until 26 July 2002, several days after the Dublin Circuit Family Court's initial decision of 19 July 2002, on an application by the biological father, ordering the applicant to take all necessary steps to ensure that the adoption procedure was suspended.

69. In those circumstances, the Government submitted that the information provided to the applicant in accordance with French legislation was capable of affording effective protection of her right to private and family life.

2. The third party's submissions

70. Mr Byrski is the child's biological father. As to the facts, he stated that he had had a relationship with Ms Kearns in 2001, during which time the child had been conceived, and that, having had no further contact with her after the relationship had ended in September 2001, he had made numerous approaches to the Irish administrative and judicial authorities (including his application to the Dublin Circuit Family Court), in the belief that the child would be born in Ireland. Having learned in July 2002 that Ms Kearns had given birth in France, he had obtained an order from the Dublin court for the discontinuation of the adoption procedure and the return of the child to Ireland. From July 2002 he had contacted the French authorities, informing them that he was the child's father and that he wanted the adoption procedure to be halted and the child returned to him. He outlined all the steps he had taken with the administrative and judicial authorities to that end (see paragraphs 17 and 20 above).

71. Mr Byrski submitted that his intention had always been to be a good father to his daughter and to look after her, but that the French authorities' interference had prevented him from having a normal family life with her.

3. The Court's assessment

72. The Court considers in the first place that the relationship between the applicant and her child comes within the sphere of family life under Article 8 of the Convention (see *V.S. v. Germany* (dec.), no. 4261/02, 22 May 2007).

73. The Court further considers that the authorities' refusal of the request for the child's return had a basis in law, namely Article 348-3 of the Civil Code and Article L. 224-6 of the Social Action and Families Code, and pursued the legitimate aim of protecting the rights and freedoms of others, in this instance the child.

74. The Court reiterates that although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in effective respect for family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves. The boundaries between the State's positive and negative obligations under Article 8 do not lend themselves to precise definition. The applicable principles are nonetheless similar. In particular, in both instances regard must be had to the fair balance which has to be struck between the competing interests; and in both contexts the State enjoys a certain margin of appreciation (see *Keegan v. Ireland*, judgment of 26 May 1994, Series A no. 290, p. 19, § 49; *Odièvre*, cited above, § 40; and *Evans v. the United Kingdom* [GC], no. 6339/05, § 75, ECHR 2007-...). The Contracting States will usually enjoy a wide margin of appreciation if the public authorities are required to strike a balance between competing private and public interests or Convention rights. This applies all the more where there is no consensus within the member States of the Council of Europe as to the relative importance of the interest at stake or as to the best means of protecting it (see *Evans*, cited above, §§ 77-81).

75. The Court further reiterates that its task is not to substitute itself for the domestic authorities, but rather to review under the Convention the decisions taken by those authorities in the exercise of their power of appreciation. The Court will therefore examine whether France, in handling the applicant's action for recovery of her child, acted in breach of its positive obligations under Article 8 of the Convention (see *Hokkanen v. Finland*, judgment of 23 September 1994, Series A no. 299-A, p. 20, § 55; *Mikulić v. Croatia*, no. 53176/99, § 59, ECHR 2002-I; and *P., C. and S. v. the United Kingdom*, no. 56547/00, § 122, ECHR 2002-VI).

(a) Length of the period allowed for withdrawing consent

76. The applicant complained of the shortness of the two-month time-limit provided for in the second paragraph of Article L. 224-6 of the Social Action and Families Code for withdrawing consent to adoption.

77. As noted in paragraphs 39-44 above, the Court observes that there is no consensus among the member States of the Council of Europe regarding adoption, provision being made for a period of reflection in some countries but not in others, such as France. Similarly, as regards the time-limit for withdrawing consent, there is considerable diversity in the legislation of the member States that have provided for this possibility; some legal systems allow consent to be withdrawn until the adoption order is issued, whereas in others, by contrast, consent is irrevocable. In the States that have a fixed time-limit for withdrawing consent, it varies from ten days to three months.

It cannot therefore be said that there is common ground in the member States' legislation and practice.

78. As regards the time-limit prescribed by French law, the Government pointed out that it had been reduced from three to two months by the Act of 5 July 1996, so that the child could quickly enjoy stable emotional relations within a new family and have the benefit of parental ties.

79. As it found in *Odièvre* (cited above, § 44), the Court observes that it is confronted in the present case with interests that are not easily reconciled: those of the biological mother, the child and the adoptive family. There is also a general interest at stake (*ibid.*, § 45). In striking a balance between these different interests, the child's best interests should be paramount.

80. In this connection, the Court accepts the relevance of the arguments put forward by the Government on the basis of studies by child-welfare professionals, which have stressed that it is in the child's interests to enjoy stable emotional relations within a new family as quickly as possible. It further observes that the *tribunal de grande instance* held that psychological and legal stability should be sought for the child, "if only through the shortness of the time within which the natural parents may avail themselves of the appropriate procedures".

81. Furthermore, while the two-month time-limit may seem brief, it nevertheless appears sufficient to allow the biological mother time to reflect and to reconsider her decision to give the child up. The Court is mindful of the psychological distress which the applicant must have experienced, but observes that she was 36 years old at the time, was accompanied by her mother and had two lengthy interviews with the social services after giving birth (see paragraphs 86-87 below).

82. The Court lastly notes that in a recent case (*V.S. v. Germany*, cited above), concerning a minor who had consented to the adoption of her child, it found that the German authorities had not overstepped their margin of appreciation, although under German law, consent to adoption is irrevocable except in the event of a declaration of nullity, which had not been sought in that particular case.

83. Having regard to the margin of appreciation which States must be afforded in view of the diversity in legal systems and traditions and in practice (see *Odièvre*, cited above, § 49, and *Evans*, cited above, § 77), the Court considers that the time-limit prescribed by the French legislation seeks to strike a balance and to ensure sufficient proportion between the competing interests (*ibid.*; see also, conversely and *mutatis mutandis*, *Mizzi v. Malta*, no. 26111/02, ECHR 2006-...).

84. Moreover, in the circumstances of the case, the action brought by the third party before the Irish authorities has no bearing on the conclusion reached by the Court.

(b) Information provided to the applicant

85. The applicant submitted that the French authorities had not taken all the necessary steps to ensure that she understood the precise implications of her actions. She argued, in particular, that she had not been provided with sufficient linguistic assistance to be able to understand the procedures and time-limits subject to which she could take her child back.

86. The Court observes that the applicant, an Irish national resident in Dublin, chose to give birth in France in order to take advantage of the possibility of registering the birth anonymously, which does not exist in Irish law. As is shown by the documents produced to the Court, she visited the maternity ward in the week prior to the birth, assisted by a lawyer and her mother. The presence of a legal specialist creates a presumption that the applicant was provided with legal information even before the birth.

87. On the two days following the birth, the applicant, accompanied by her mother, had two lengthy interviews (each lasting half a day) with the social services, in the presence of, respectively, a nurse and a doctor with knowledge of English, who had been made available by the hospital to act as interpreters. In this connection, the Court considers that Article 8 cannot be construed as requiring the authorities to ensure the presence of a qualified interpreter in such cases.

88. With regard in particular to the information received by the applicant about the time-limit for withdrawing consent, the Court observes that the record of K.'s placement in State care mentioned two periods (two months and six months), which, as the Court of Appeal found, could have given rise to confusion. However, the form of consent to adoption signed by the applicant on the same day expressly stated:

“I ... certify that I have been informed: ... that this document will become FINAL after a period of TWO MONTHS, that is, on 20 April 2002, and that during this period, the child may be returned to me in accordance with the prescribed procedures for withdrawal of consent (Article 348-3, paragraphs 2 and 3, of the Civil Code).”

89. Accordingly, no ambiguity could have persisted in the applicant's mind as to the period within which she could seek the return of her child.

90. Lastly, it appears from the relevant documents that the applicant was given a notice outlining the time-limits and conditions for the return of the child, and a model letter for withdrawal of consent.

91. Having regard to the foregoing, the Court considers that in the present case the French authorities provided the applicant with sufficient and detailed information, affording her linguistic assistance not required by law and ensuring that she was informed as thoroughly as possible of the implications of her choice and of the time-limits and procedures for withdrawing consent.

92. The Court therefore concludes that the State has not breached its positive obligations under Article 8 of the Convention in relation to the applicant.

There has therefore been no violation of that provision.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS TO THE LACK OF AN EFFECTIVE REMEDY

93. The applicant submitted that she had been denied the right to an effective remedy, on account of the shortness of the time-limit for withdrawing consent and the insufficiently precise information she had been given about the time-limit. She relied on Article 6 § 1 of the Convention, the relevant parts of which provide:

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

94. In so far as this complaint is indissociable from the complaint under Article 8 of the Convention, which it has examined above, the Court considers that it should be declared admissible and that no separate issue arises under Article 6 § 1.

III. OTHER ALLEGED VIOLATIONS

A. Fairness of the proceedings

95. The applicant also complained, under Article 6 § 1 of the Convention, that the proceedings in the Court of Cassation had not been fair in that the advocate-general, who had not attended the hearing, had filed written submissions to which her lawyer had been unable to reply. Furthermore, in quashing the judgment in her case without remitting it to the court below, the Court of Cassation had ignored an entire section of her arguments as to the incompatibility of French law with the Convention and had wrongly declared one of the prefect's grounds of appeal admissible.

96. As to the first point, the Court observes that the applicant was represented in the Court of Cassation by a member of the *Conseil d'Etat* and Court of Cassation Bar. Her lawyer was thus able to make use of the practice outlined in *Reinhardt and Slimane-Kaïd v. France* (judgment of 31 March 1998, *Reports of Judgments and Decisions* 1998-II, p. 666, §§ 106-107), whereby the advocate-general informed him prior to the hearing of the tenor of his submissions, thus giving him the opportunity to reply by means of oral submissions at the hearing or a note sent to the court in deliberations. The Court found in *Reinhardt and Slimane-Kaïd* that this practice satisfied the requirements of Article 6 § 1 of the Convention and sees no reason to depart from that approach in the instant case.

97. As to the second and third points, the Court observes that it has already had occasion to rule on the practice whereby the Court of Cassation

quashes a judgment without remitting it to the court below (see, for example, *Riha v. France* (dec.), no. 71443/01, 24 June 2004). In the instant case the Court observes that the applicant's submissions, based, *inter alia*, on the Convention, were the subject of detailed argument in the *tribunal de grande instance* and the Court of Appeal and considers that Article 6 § 1 did not entitle her to have them addressed once again by a court of appeal following the remittal of the case. Nor can the Court discern any appearance of arbitrariness in the fact that the Court of Cassation, which determines points of law alone, declared the ground of appeal by the prefect of the *département* of Nord admissible.

98. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Discrimination

99. The applicant further complained, under Article 14 of the Convention taken together with Article 8, that she had been discriminated against on the ground of language in that she was a native English speaker.

100. Article 14 provides:

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

101. The Court considers that the applicant has not shown that she suffered any discrimination since, as the domestic courts found, she was on the contrary given linguistic assistance not required by law.

102. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 8 of the Convention and Article 6 § 1 as to the lack of an effective remedy admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 8 of the Convention;
3. *Holds* that no separate issue arises under Article 6 § 1 of the Convention.

Done in French, and notified in writing on 10 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Boštjan M. Zupančič
President