CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 68864/01
by Hermance Merger and Clémentine Cros
against France

The European Court of Human Rights (First Section), sitting on 11 March 2004 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,
Mr J.-P. COSTA,
Mr G. BONELLO,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,

and Mr S. QUESADA, *Deputy Section Registrar*,

Having regard to the above application lodged and registered on 3 November 2000,

Having deliberated, decides as follows:

FACTS

The applicants, Hermance Merger and Clémentine Cros, are French nationals who were born in 1968 in 1936 respectively and live in Paris. The respondent Government are represented by Mr R. Abraham, Director of Legal Affairs at the Ministry of Foreign Affairs.

A. The circumstances of the case

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

The first applicant was born on 6 December 1968 of a relationship that had begun in 1964 between the second applicant, a widow with a daughter born in 1957, and R. Merger, the married father of four children born in 1942, 1944, 1945 and 1947. Her paternity was recognised by her father on 7 December 1973 and she has used his name since 17 May 1985.

On 11 May 1980 the first applicant's father drew up a private document dividing his movable property between his five children. The document was signed by the four legitimate children and by the father on behalf of the first applicant.

On 11 October 1984 he made a holograph will in which he bequeathed the freely disposable assets in his estate to the first applicant and directed that his wife should not take a life interest over that part of his estate.

In a second holograph will dated 16 June 1985, he said that it was his wish that his estate should be divided into five parts by the drawing of lots in the presence of all his children, the freely disposable share bequeathed to the first applicant after lifetime gifts had been brought into account and his wife's life interest over the four legitimate children's shares reduced. He also said that he wanted the first applicant to receive a reversionary pension for the duration of her studies and, if the law permitted, her tuition fees to be paid for.

He died on 12 March 1986 leaving his wife, four legitimate children and the first applicant – an adulterine child – as his heirs.

A notary was instructed to administer the estate and took an inventory at the home on 20 June 1986. As the first applicant was sitting her baccalaureate, she was represented by the second applicant, who noted that certain objects were missing. The widow claimed ownership of certain items of movable property. The value of the movables recorded in the inventory came to a total of 114,175 French francs (FRF).

Since it did not prove possible to reach a friendly settlement with regard to the estate, the deceased's four legitimate children and their mother issued proceedings against the applicants in the Paris *tribunal de grande instance* seeking, *inter alia*, an order setting aside the gift of the freely disposable property to the first applicant, an order setting aside the gifts made by the father to the second applicant and an order assessing the first applicant's entitlement at 10% of the net assets.

The applicants asked the court, *inter alia*, to dismiss the applications and to make an order requiring their opponents to deliver up to the first applicant all the movable property that had been allocated to her on 11 May 1980.

In a judgment of 6 November 1992, the *tribunal de grande instance* found that funds that had been used to purchase a flat in the Avenue d'Italie in Paris and a sum of FRF 500,000 were gifts that had been made to the testator's daughter through an intermediary and set them aside pursuant to Articles 908 and 911 of the Civil Code. It added that the value of the assets acquired with those monies had to be restored to the estate. It further ruled that by virtue of Articles 908 and 911 of the Civil Code, the first applicant's could not receive more than 10% of the estate and that the gift of the freely disposable share was ineffective. Relying primarily on Article 931 of the Civil Code, it held that the division of the estate on 11 May 1980 was null and void, as it was not in the correct form and added, as a secondary point, that the first applicant was entitled to only 10% of the movable assets that were to be distributed in kind. Lastly, it directed that the first applicant's share should be taken free of any life interest.

Relying on Articles 8 and 14 of the Convention, the applicants appealed against that judgment. They changed lawyers. In fresh submissions, their new lawyer stated that the applicants wished to "stand by their last written submissions pleading the Convention and their equal entitlement to a share in the estate".

In a judgment of 24 September 1996, the Paris Court of Appeal transferred the case to the Dijon Court of Appeal, as one of the parties was a judge at the Paris *tribunal de grande instance*, while another had become a member of the Paris Bar during the course of the proceedings.

In a judgment of 27 November 1997, the Dijon Court of Appeal upheld the *tribunal de grande instance*'s decisions not to grant the first applicant identical rights of succession to the four legitimate children and a right to the freely disposable share of the estate and to classify the second applicant's property as gifts through an intermediary. It declared the first applicant's request for a reversionary pension inadmissible, holding that she was an adulterine child who was not prepared to abandon her rights of succession.

The applicants appealed to the Court of Cassation on points of law. In written submissions lodged on 29 October 1998, they complained of the *tribunal de grande instance*'s decisions to classify the second applicant's property as a gift through an intermediary, to bring it into account as part of the estate and to rule that the movable property would be divided in accordance with the statutory rules as part of the overall administration of the estate. A list of documents was lodged on 13 January 1999.

On 4 February 1999 the notary liquidated the estate and drew up a deed of division. The first applicant signed the deed "without prejudice to the appeal to the Court of Cassation that has been served on the parties". Under the terms of the deed, she was required to pay a balancing cash adjustment of FRF 1,549,284.83 to the other heirs.

The second applicant sold her home in order to pay that balance on behalf of her daughter, who had no property of her own.

On 8 October 1999 the judge rapporteur lodged his report, which was communicated to the advocate general on 20 October 1999.

In a note to the advocate general dated 10 March 2000, the applicants, relying on the European Court of Human Rights' judgment of 1 February 2000 in the case of *Mazurek v. France*, argued that the reduction in the adulterine child's share of the estate pursuant to Article 760 of the Civil Code infringed the Convention.

A hearing took place in public on 14 March 2000.

In a judgment of 3 May 2000, the Court of Cassation dismissed the applicants' appeal. It dealt only with the complaints set out in the written submissions.

Further to that judgment, the balancing cash adjustment was paid to the other heirs.

B. Relevant domestic law and practice

1. Relevant domestic law

Article 978 of the New Code of Criminal Procedure

> "Appellants shall be barred from proceeding with their appeal unless, within five months of giving notice of appeal on points of law, they file at the Court of Cassation's registry and serve on the respondent written submissions setting out the legal grounds on which they rely in their appeal against the impugned decision.
>
> On pain of being declared inadmissible by the Court of Cassation of its own motion, each ground of appeal or limb thereof shall plead a single ground for cassation. On pain of a like sanction, each ground of appeal or limb thereof shall state:
>
> (i) the ground for cassation relied on;
>
> (ii) the part of the decision criticised;
>
> (iii) the arguments in support of the ground for cassation."

The relevant provisions of the Civil Code, as in force at the material time, provided:

Part I: Inheritance

Chapiter III: The various orders of inheritance.

Section III: Inheritance by issue

Article 745

"Children or their issue shall inherit from their father and mother, grandfathers, grandmothers or other ancestors, irrespective of sex or primogeniture, and even if they are born of different marriages.

The estate shall devolve upon them in equal portions and *per capita* if they are all first degree issue and heirs in their own right; they shall inherit *per stirpes* if all or some of them inherit through their ascendants."

Section VI: Rights of children born out of wedlock to inherit

Article 757

"Children born out of wedlock shall, in general, inherit from their father and mother or other ancestors, as well as from their brothers and sisters or other collateral relatives, on the same terms as legitimate children."

Article 759

"Children born out of wedlock whose mother or father was, at the time of their conception, bound by a marriage to another person do not prevent that person from inheriting from their parent if, but for their birth, he or she would have been entitled to inherit by virtue of Articles 765 and 766 below.

In such event and irrespective of their number, they shall receive only half of the share to which the spouse would have been entitled in their absence under the aforementioned Articles, the calculation being made according to line of descent..."

Article 760

"Children born out of wedlock whose father or mother was, at the time of their conception, bound by a marriage of which legitimate children were born are entitled to inherit from that parent in competition with the legitimate children; however, they shall each receive only half of the share to which they would have been entitled if all the children of the deceased, including themselves, had been legitimate.

The children born of the marriage injured by the adultery shall inherit in addition the fraction by which the adulterine child's share of the estate is thus reduced; it shall be divided between them in proportion to their share in the estate."

Part II: Lifetime gifts and wills

Chapter II: Capacity to make or receive lifetime and testamentary gifts

Article 908

"Children born out of wedlock may not receive a lifetime or testamentary gift from their father or mother in excess of their entitlement under Articles 759 and 760 above if the donor was, at the time of their conception, bound by a marriage to another person.

However, an action to reduce their share may only be brought by the spouse or the children of the marriage, as the case may be, and after the estate has passed to the heirs."

Article 911

"Any disposition in favour of a person without capacity shall be null and void, albeit disguised as a contract for consideration or made in the name of intermediaries.

The father, mother, issue and spouse of a person lacking capacity shall be deemed to be intermediaries."

Chapter III: Freely disposable portion of the estate and reduction

Section I: Freely disposable portion of the estate

Article 915-2

"A child born out of wedlock whose entitlement is reduced pursuant to Articles 759 and 760 may, in exchange for abandoning his or her rights in favour of the heirs, claim maintenance from the estate.

The rules set out in Article 207-1 of this Code shall apply to such maintenance.

The heirs may, however, avoid such a claim by granting the applicant a share equal to that which he or she would have received but for the application of Articles 759 and 760."

The Law of Succession (Modernisation) Act of 3 December 2001 (which did not apply to the succession arrangements in the instant case)

On 4 December 2001 Law no. 2001-1135 of 3 December 2001 on the Rights of the Surviving Spouse and Adulterine Children and Modernising Various Provisions of Succession Law was published in the Official Gazette. The Act abolishes all discrimination against adulterine children. It repeals all the provisions of the Civil Code (notably, Articles 759, 760, 908 and 915-2) that discriminate with regard to succession rights against children whose father or mother was married to a third party when they

were conceived. It also repeals the provisions protecting the surviving spouse in cases in which his or her interests compete solely with those of adulterine children.

2. Relevant domestic practice

Judgment of 2 May 2000 of the Montpellier *tribunal de grande instance*:

> "Since it establishes a distinction based on birth between the children's rights to inherit, the application of Article 760 of the Civil Code infringes the provisions of the Convention ..., as the European Court has recently held (in its judgment of 1 February 2000 between Mr Mazurek and the French State).
>
> ... Article 760 of the Civil Code must not be applied, therefore, since it discriminates against the adulterine child without any genuinely justifiable reason and is inconsistent with the European Convention on Human Rights, which, by virtue of Article 55 of the Constitution, ranks above the domestic legislation and is, according to the settled case-Law of the French courts, directly applicable."

COMPLAINTS

1. The applicants complain that, under the applicable provisions of French civil law, the fact that the first applicant was an adulterine child meant that she was entitled to a smaller share of her father's estate than her half brothers and sisters. They allege that they were victims of a violation of Articles 8 and 14 of the Convention and Article 1 of Protocol No. 1.

2. Relying on the same provisions, they also complain that, because the first applicant was born out of wedlock, her capacity to receive lifetime or testamentary gifts from her father and the second applicant's capacity to receive any gifts from the father of her child, were limited under French civil law. They argue that the applicable provisions of the Civil Code thus defeated the deceased's wish to benefit the first applicant, an heir, and the second applicant, who was not a party to the succession.

3. They complain under Articles 8 and 14 of the Convention and Article 1 of Protocol No. 1 that the provisions of the Civil Code do not respect the property rights of the mothers of adulterine children, in particular the family home of both mother and child.

THE LAW

The applicants complain of a breach of the first applicant's rights to inherit and of restrictions on their capacity to receive gifts from her father either during his lifetime or on his death. They allege that they have been

discriminated against on account of the first applicant's status as an adulterine child and rely on Articles 8 of the Convention and Article 1 of Protocol No 1, taken together with Article 14 of the Convention. These provisions read as follows:

Article 8 of the Convention

"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 as 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 well-being of the country, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 14 of the Convention

"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."

Article 1 of Protocol No. 1

"No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

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

A. Whether the application was admissible

1. The objection that the second applicant had no standing as a victim

The Government argued, firstly, that the second applicant did not have standing as a victim. They explained that the use of intermediaries was a "form of sham", which entailed making a person appear in a legal document to be the holder of a right that was in fact held by someone else whose identity was kept secret because he or she did not have capacity to receive, notably as a result of Article 911 of the Civil Code. Under the case-law, the presumptions created by that provision were irrebuttable. Thus, evidence to the contrary was inadmissible and the presumption could not be rebutted, even if it was alleged that the factual and documentary evidence in the case

showed that the donor or testator had genuinely intended to benefit the person referred to in the document.

They said that the French authorities could not be said to have infringed the second applicant's right to the peaceful enjoyment of her possessions. The domestic courts had found in their unfettered discretion that the gifts made to the second applicant were in fact intended for the first applicant and, accordingly, had set them aside. Had it not been for the existence of Article 915-2 of the Civil Code, the second applicant would not have received the gifts in issue. The second applicant had been under no obligation to discharge her daughter's debts or to sell her house in order to pay the balancing cash adjustment restoring the gifts in issue to the estate. The Government further argued that the fact that the second applicant had a second daughter had no bearing on whether she was a victim. From the above observations, it followed that only the first applicant could claim to have been affected by the order setting aside the gifts.

The second applicant pointed out that she had at all stages been a party to the domestic proceedings and had consistently maintained that the gifts were not sham dispositions through intermediaries and that the property really did belong to her. In addition, she had had to sell her immovable property to enable her daughter to pay off the other heirs in accordance with the court order on the division of the estate. Lastly, her eldest daughter was also entitled to inherit from her, so that the gifts could not be said to have been made solely for the first applicant's benefit. She consequently submitted that she had been a victim of a violation of the Convention.

The Court notes that under Article 34 of the Convention, it may only receive applications from persons claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The word “victim” in the context of that Article denotes the person directly affected by the act or omission in issue, the existence of a violation of the Convention being conceivable even in the absence of prejudice (*Marckx v. Belgium*, judgment of 13 June 1979, Series A no. 31, § 27; *Johnston and Others v. Ireland*, judgment of 18 December 1986, Series A no. 112, § 42). The fact that the remedy which an applicant wishes to have examined by a court has been declared admissible justifies his or her being regarded as a victim (*Balmer-Schafroth and Others v. Switzerland*, judgment of 26 August 1997, *Reports of Judgments and Decisions* 1997-IV, § 26).

In the present case, the Court notes that the second applicant was a party to the domestic proceedings in her own name and must therefore be regarded as a victim.

Accordingly, the objection must be dismissed.

2. Objection of failure to exhaust domestic remedies

The Government said that the applicants had at no stage of the proceedings alleged a violation of Article 1 of Protocol No. 1, taken together with Article 14 of the Convention.

They accepted, however, that they had alleged a violation of Article 8, taken together with Article 14 of the Convention, in the Court of Appeal, although not in the Court of Cassation. They questioned whether the applicants really had lodged a note with the registry and whether the chamber that had heard the appeal had been aware of its existence and content. They pointed out that in any event the time-limit for presenting grounds of appeal on points of law was the same as the time-limit for lodging written submissions. While documents and additional written observations could be produced subsequently in reply to the respondent submissions or on receipt of a request for information from the judge rapporteur, under no circumstances could that procedure be used to add a new ground of appeal. That obligation prevented the debate being widened beyond the grounds set out in the notice of appeal, other than on the initiative of the Court of Cassation itself. The Government referred in that connection to the decisions in which the Court had ruled that even when the domestic courts had the power or a duty to examine the disputes under the Convention of their own motion, that did not release the applicants from the obligation to plead the Convention before the domestic courts or to put forward equivalent or similar grounds of appeal in order to draw their attention to the problem they intended subsequently to refer to the Court if necessary.

In the present case, the Government noted that the six grounds of appeal on points of law raised by the applicants in their appeal to the Court of Cassation were totally unconnected with the question of Article 760 of the Civil Code's compatibility with the Convention and that the various letters sent to the applicants by the lawyer who had represented them in the Court of Cassation showed that he had deliberately elected, against the wishes of the first applicant, not to plead Article 8 of the Convention. Such a ground of appeal was not bound to fail, as the domestic case-law could have changed, as the Montpellier *tribunal de grande instance*'s judgment of 2 May 2000 and the Pau Court of Appeal's judgment of 28 November 2000 showed.

The Government added that there was no evidence that the applicants' note had reached the advocate general, still less than that the members of the Court of Cassation had been informed of its existence and content. The lawyer acting for the other side had been served with the note on 10 March 2000, one working day before the hearing, and even assuming that the applicants' lawyer had sent it to the advocate general at the same time, the time frame was far too short to guarantee that he actually received it. In any event, the five-month period laid down by Article 978 of the Code of Civil

Procedure had necessarily expired by the time the applicants lodged their note.

Thus, the Government argued that the applicants had never raised the issue of a violation of Article 1 Protocol No. 1 in the domestic courts and had failed validly to complain of a violation of Article 8, taken together with Article 14, of the Convention in the Court of Cassation.

The applicants said that following the European Court's judgment of 1 February 2000 in the case of *Mazurek v. France*, the domestic courts were under a duty to change the domestic case-law by establishing new precedents. In the instant case, the Court of Cassation should therefore have examined the dispute from the standpoint of the Convention of its own motion.

They went on to say that they had done all they could to ensure that the Convention was referred to in connection with their case. Thus, they had lodged submissions in the Court of Appeal expressly and explicitly referring to the breach of the Convention provisions, but those submissions had been rejected in a vague and insufficiently reasoned decision. They had appealed to the Court of Cassation on 9 March 1998 and lodged written submissions in support on 31 July 1998, despite the fact that the Court of Cassation had ruled that the Convention did apply to the rights of succession of adulterine children. It was not until two years after they had brought their appeal to the Court of Cassation, by which time the time-limit for lodging their written submissions in support had expired, that the *Mazurek v. France* judgment finding against France on this point was delivered. They said that directly they became aware of that judgment they lodged a note with the registry of appeals at the Court of Cassation in which they argued that the reduction of the adulterine child's share in the estate infringed the Convention.

They also explained that among the documents appended to their written submissions in 1998 had been the written submissions they had served in the proceedings in the Court of Appeal in which they had alleged a failure to comply with the provisions of the Convention.

They also pointed out that Article 1015 of the New Code of Civil Procedure required the President of the Chamber of the Court of Cassation to alert the parties to grounds of appeal likely to be raised by the Court of Cassation of its own motion and to invite them to present observations.

They consequently considered that they had exhausted domestic remedies.

The Court notes that under the terms of Article 35 § 1 of the Convention, it may only deal with a matter after domestic remedies have been exhausted. All applicants must provide the domestic courts with the opportunity which is in principle intended to be afforded to Contracting States by that provision, namely the opportunity of preventing or putting right the violations alleged against them. Thus, the complaint intended to be made subsequently to the Court must first have been made – at least in substance

– to the appropriate domestic body, and in compliance with the formal requirements and time-limits laid down in domestic law (*Cardot v. France*, judgment of 19 March 1991, Series A no. 200, p.19, § 36). The Court would emphasise, however, that the application of the rule must make due allowance for the context. Accordingly, it has recognised that Article 35 must be applied with some degree of flexibility and without excessive formalism (see, among other authorities, *Ankerl v. Switzerland*, judgment of 23 October 1996, *Reports* 1996-V, p. 1565, § 34).

The only remedies which the provisions of Article 35 require to be exhausted are those that relate to the breaches alleged and at the same time are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (*Vernillo v. France*, judgment of 20 February 1991, Series A no. 198, pp. 11-12, § 27; *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports* 1996-IV, p. 1210, § 66; *Dalia v. France*, judgment of 19 February 1998, *Reports* 1998-I, pp. 87-88, § 38). In addition, according to the "generally recognised principles of international law", there may be special circumstances which absolve the applicant from the obligation to exhaust the domestic remedies at his disposal (*Van Oosterwijck v. Belgium*, judgment of 6 November 1980, Series A no. 40, pp. 18-19, §§ 36-40; *Akdivar and Others v. Turkey* cited above, p. 1211, § 69). Thus, an applicant who establishes that a domestic remedy has no prospect of success will be absolved from using it. However, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement (*Akdivar and Others v. Turkey* cited above, p. 1211, § 68).

In the instant case, the Court notes, firstly, that the applicants complained in the Court of Appeal that, because she was an adulterine child, the first applicant had been discriminated against as regards her rights to inherit, her capacity to receive lifetime or testamentary gifts from her father and her right to receive a reversionary pension without abandoning her rights of succession. They also complained of the *tribunal de grande instance*'s finding regarding gifts received by the second applicant from the father. They expressly relied on Articles 8 and 14 of the Convention and implicitly on Article 1 of Protocol No. 1.

The crux of the problem as presented to the Court of Appeal was that the French legislation discriminated between adulterine and legitimate children

as regards children's rights to inherit and their capacity to receive lifetime or testamentary gifts from their parents. These grounds of appeal closely resembled the various complaints raised by the applicants in the Court.

The Court notes that the reasons given by the Court of Appeal for rejecting those arguments were consistent with the Court of Cassation's case-law at the time, which held that the distinction made between adulterine and legitimate children was not intended to discriminate between children on grounds of birth, but to secure a minimum of compliance with the obligations contracted through marriage by the married parent to whom the child was born out of wedlock (Court of Cassation, First Civil Division, 25 June 1996, *Bulletin Civil I*, no. 268, p.188). It was because of that line of authority that the applicants considered that the ground of appeal alleging discrimination contrary to the Convention between the rights of adulterine and legitimate children to inherit was bound to fail and did not raise it in the Court of Cassation. Nor does the Court find the Government's arguments persuasive. It considers that, in view of the legal and jurisprudential context obtaining at the time, had such a ground of appeal been filed in 1998, it would have had no prospect of success.

The Court also notes that on 10 March 2000 the applicants lodged a note with the registry of appeals of the Court of Cassation addressed to the advocate general. It finds that the Government have not adduced evidence to suggest that the chamber that heard the appeal was unaware of the existence or content of that note.

In the note, the applicants pleaded Articles 8 and 14 of the Convention and Article 1 of Protocol No. 1. They complained that the first applicant's rights to her father's estate had been reduced by half and referred to the Court's *Mazurek* judgment of 1 February 2000 (*Mazurek v. France*, no. 34406/97, ECHR 2000-II), condemning the distinction between adulterine and legitimate children. They expressly asked the Court of Cassation to examine their appeal in the light of that judgment and to comply with it, while at the same time repeating the arguments and grounds they had relied on in the Court of Appeal.

Thus, directly there was a new development capable of affecting the Court of Cassation's case-law, the applicants drew the Court of Cassation's attention to the complaint they subsequently intended to refer to the Court, namely the incompatibility of the French law of succession with the Convention, owing to discrimination on grounds of birth. The fact that it did not occur until after the time-limit for lodging the grounds of appeal on points of law had expired was beyond the applicants' control and they cannot be accused of any negligence in that regard.

The Court finds, in the light of the foregoing, that the applicants can be regarded as having exhausted domestic remedies for the purposes of Article 35 § 1 of the Convention. Accordingly, the Government's objection of failure to exhaust domestic remedies must be dismissed.

B. Merits of the Application

In the alternative, the Government said that they would leave the merits of the application to the discretion of the Court.

The applicants submitted that there has been a violation of Article 8 of the Convention and Article 1 of Protocol No. 1, taken together with Article 14 of the Convention.

The Court considers, in the light of the parties' submissions taken as a whole, that this complaint raises complex issues of fact and law which cannot be resolved at this stage in the examination of the application, but require examination on the merits. It follows that this complaint cannot be declared manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

For these reasons, the Court unanimously,

Declares the application admissible, without prejudging the merits of the case.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President