



Environmental protection associations opposed to the planned storage centre for radioactive waste on the Bure site: a disproportionate restriction on the right of access to a tribunal but no violation of the right of access to information

In today's Chamber judgment¹ in the case of [Association BURESTOP 55 and Others v. France](#) (applications nos. 56176/18, 56189/18, 56232/18, 56236/18, 56241/18, 56247/18) the European Court of Human Rights held, by a majority, that there had been:

a violation of Article 6 § 1 (right of access to a tribunal) of the European Convention on Human Rights in respect of the *MIRABEL-LNE* Association, and

no violation of Article 10 (right of access to information) in respect of the associations Burestop 55, ASODEDRA, Fédération Réseau Sortir du Nucléaire, Les Habitants vigilants du Canton de Gondrecourt and the CEDRA 52 collective.

The case concerned environmental protection associations which were opposed to the planned industrial geological storage centre known as *Cigéoon* the Bure site along the boundaries of the *départements* of Meuse, Haute-Marne and Vosges, in the Grand Est administrative region. The centre was designed for the storage in deep geological repositories of high-level and long-life radioactive waste. Those associations had sued the National Agency for the management of radioactive waste (ANDRA), seeking compensation for damage caused by the failure to provide mandatory public information under Article L. 542-12 7° of the Environmental Code. Their actions were dismissed, one for the association's lack of *locus standi* and the five others on the merits.

As regards the association *MIRABLE-LNE*'s right of access to a tribunal, the Court noted first of all that the Versailles Court of Appeal, which had declared its action inadmissible, had not taken into account the fact that the association was officially approved under Article L. 141-1 of the Environmental Code. Such approval had, in principle, conferred *locus standi* on it. The Court then noted that the Versailles Court of Appeal had found that the applicant association's statutory aim had explicitly comprised neither preventing the environmental and health risks posed by the nuclear industry and its relevant activities and development projects nor informing the public about the dangers of burying radioactive waste: its statute was worded in much more general terms to the effect that the association was aimed at protecting the environment. Emphasising, in particular, that protecting against nuclear hazards was clearly an integral part of environmental protection, the Court ruled that the conclusion reached by the Versailles Court of Appeal and upheld by the Court of Cassation, which had imposed a disproportionate restriction on the right of access to a tribunal, was manifestly unreasonable on that point. It found a violation of Article 6 § 1 of the Convention in that connection.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

As regard the right of access to information which could, under certain circumstances, arise under Article 10 of the Convention, the Court held, for the first time, that that right would be rendered nugatory if the information provided were dishonest, inaccurate or insufficient. It deduced that respect for that right required the information provided to be reliable, particularly where the right stemmed from a legal obligation on the State, and that in the event of a dispute (“contestation”) in that regard, those concerned should have a remedy providing for review of the content and quality of the information provided, in the framework of adversarial proceedings. In the present case the Court noted that five of the six applicant associations had been able to lodge with the domestic courts an action which had permitted, under fully adversarial proceedings, the effective review of ANDRA’s compliance with its legal obligation to provide the general public with information on the management of radioactive waste, and of the content and quality of the information communicated by the agency concerning the geothermal potential of the Bure site.

While noting that the Court of Appeal should have more fully substantiated their response to the applicant associations’ challenge to the reliability of specific items of information in ANDRA’s consolidated report of 21 July 2009, the Court considered that the five associations had had access to a remedy fulfilling the requirements of Article 10 of the Convention.

Principal facts

The applicants were the following environmental protection associations: Burestop 55 and MIRABELLE, with their head offices in Bar-le-Duc (*département* of Meuse); ASODEDRA, with its head office in Grand (Vosges); CEDRA 52, with its head office in Saint Dizier (Haute-Marne); Les Habitants vigilants du Canton de Gondrecourt, with its head office in Gondrecourt-le-Château (Meuse); and Fédération Réseau sortir du Nucléaire, with its head office in Lyon.

Those environmental protection associations were opposed to the planned industrial geological storage centre known as *Cigéo*, designed for the storage in deep geological repositories of high-level and long-life radioactive waste. *Cigéo* was to be established on the Bure site in the municipal territories of Bure, Ribeaucourt, Mandres-en Barrois and Bonnet (hereafter “the Bure site”), along the boundaries of the Meuse, Haute-Marne and Vosges departments, in the Grand Est administrative region.

Responsibility for the long-term management of radioactive waste had been entrusted to the National Agency for the management of radioactive waste (ANDRA), a public industrial and commercial body responsible for “providing the public with information on the management of radioactive waste and promoting the dissemination of scientific and technological knowledge in that sphere”.

In 1998 the Government had chosen the Bure site for the construction of a research laboratory on the storage of radioactive waste in deep geological repositories. The work had begun in 2000, and the laboratory, run by ANDRA, had come into operation in 2007.

In 2006 Parliament adopted storage in deep geological repositories as the reference solution for managing high-level, medium-level and long-life radioactive waste. In 2009 ANDRA proposed an area of 30 km² near Bure for the construction of the underground storage centre. The Government agreed to that proposal in 2010. A public debate was held from 15 May to 15 October 2013. On 11 January 2018 the nuclear safety authority issued a positive opinion. On 3 August 2020 ANDRA asked the Ministry for Ecological Transition for a public-interest declaration concerning the *Cigéo* project, for the purposes, *inter alia*, of purchasing the requisite land.

A three-year deadline had been set for the examination of the request for planning permission. If the project were authorised the building work could begin in 2023 or 2024. A ten-year pilot industrial phase would then follow, after which *Cigéo* could become operational.

Following a report by a geophysics engineer in December 2002, which had stated that there were “considerable” geothermal resources beneath the Bure site, namely the Trias aquifer, the applicant associations presented the Bure laboratory’s local information and monitoring committee with several requests for test drilling. ANDRA carried out the drilling in 2008. In a consolidated report, ANDRA, relying on the results of the drilling, pointed out that “the geothermal resources at the transposition zone [were] low-level”. On 17 December 2012 the applicant associations requested that ANDRA acknowledge that it had thus communicated erroneous and dishonest scientific and technical information and had therefore been guilty of negligence and had consequently acted wrongfully.

On 14 May 2013 the applicant associations took proceedings against ANDRA before the Nanterre Regional Court, seeking compensation for the damage caused by that body’s failure to honour the obligation to provide public information imposed on it by Article L. 542-12 7° of the Environmental Code. The associations stressed that ANDRA’s conclusion concerning the geothermal potential of the site had been erroneous, relying on a biased assessment of the available data. They considered that ANDRA had failed to honour its obligation to provide information.

On 16 March 2015 the Nanterre Regional Court declared the associations’ actions inadmissible.

The applicant associations appealed against the judgment of 16 March 2015 before the Versailles Court of Appeal. By judgment of 23 March 2017 the Court of Appeal upheld the 16 March 2015 judgment inasmuch as it had declared the action brought by the association MIRABEL-LNE inadmissible. The court overturned it inasmuch as it had declared the action brought by the other applicant associations inadmissible. Ruling on admissibility, the Court of Appeal noted that the statutory aim of the applicant associations was to prevent the environmental and health risks posed by the nuclear industry and to inform the public of the dangers of burying radioactive waste, apart from the association MIRABEL-LNE, whose statutory aim was broader environmental protection.

Ruling on the merits, the Court of Appeal dismissed the actions brought by the five applicant associations which it had declared admissible. The applicant associations lodged appeals on points of law against the 23 March 2017 judgment.

The Court of Cassation dismissed the appeal on points of law by judgment of 24 May 2018.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right of access to a tribunal) and Article 13 (right to an effective remedy), the association MIRABEL-LNE complained of a violation of the rights to a tribunal and to an effective remedy. Relying on Article 6 § 1, Article 8 (right to respect for private and family life), Article 10 (freedom of expression) and Article 13, the applicant associations complained that the domestic courts had dismissed their claims without offering any valid reasoning, using ineffective legal arguments, and had failed to determine the merits of their claims or to conduct the requisite verifications; that their right to receive information had been rendered nugatory by the French courts in so far as they had failed to check the accuracy of the information communicated by ANDRA, and that those courts had thereby breached their right of access to a tribunal; that ANDRA, which was legally required to provide information, had issued inaccurate information on environmental risks and dangers, which was tantamount to “failure to provide information”; and that, leaving matters to the unfettered discretion of the trial courts, the Court of Cassation had refused to adjudicate on the aforementioned violations of the Convention.

The application was lodged with the European Court of Human Rights on 22 November 2018.

Judgment was given by a Chamber of seven judges, composed as follows:

Síofra O’Leary (Ireland), *President*,
Ganna Yudkivska (Ukraine),

Stéphanie Mourou-Vikström (Monaco),
Lətif Hüseynov (Azerbaijan),
Jovan Ilievski (North Macedonia),
Arnfinn Bårdsen (Norway),
Mattias Guyomar (France),

and also Victor Soloveytchik, *Section Registrar*.

Decision of the Court

Article 6 § 1

In order to justify the declaration of inadmissibility in respect of the action lodged by the applicant association, the Government referred to the conditions for access to the courts by associations seeking to uphold collective interests which they endeavoured to defend. In that regard, the condition of principle, compliance with which was reviewed by the Versailles Court of Appeal in its judgment of 23 March 2017, was based on the correlation between the appellant association's statutory aim and the collective interests which it was seeking to defend in court. The Government argued that that limitation was geared to preventing backlogs in courts as well as possible abuse by associations, such as using the right of access to justice for profit.

The Court reiterated that the court action lodged by the association MIRABEL-LNE had concerned the determination of a dispute concerning a civil right for the purposes of Article 6 § 1, a right which that association had held (the right to information and to participation in environmental matters). The Court observed that the Government, whose arguments exclusively concerned the protection of collective interests by the associations, had not provided any evidence likely to demonstrate that the refusal to adjudicate on a right of that nature had pursued a legitimate aim and had been proportionate to that aim.

Moreover, the Court noted at the outset that the Versailles Court of Appeal had disregarded the fact that the association MIRABLE-LNE had been officially approved under Article L. 141-1 of the Environmental Code. As the Government acknowledged, such approval had, in principle, conferred *locus standi* on it. Indeed, it transpired from Article L. 142-2 of the Environmental Code that such approved associations “[could] exercise the rights granted to parties to civil proceedings as regards facts causing direct or indirect damage to the collective interests which they were endeavouring to defend and amounting to an infringement of legislative provisions on the protection of nature and the environment ... or aimed at combating pollution and other deteriorations, or ensuring nuclear safety and radiation protection ... as well as the instruments enacted to implement them”. Secondly, the Court noted that in declaring the action brought by the association MIRABEL-LNE inadmissible, the Versailles Court of Appeal had concluded that unlike the other applicant associations, the statutory aim of that association had explicitly included neither combating the environmental and health risks posed by the nuclear industry and its relevant activities and development projects nor informing the public of the dangers of burying radioactive waste: its statute was worded in much more general terms to the effect that the association was aimed at protecting the environment. That approach amounted to drawing a distinction between protection against nuclear hazards and environmental protection, whereas the former was clearly an integral part of the latter. Furthermore, that interpretation of the applicant association's statutes had the effect of excessively restricting the scope of its social purpose, especially since Article 2 of those statutes was aimed at preventing “technological risks”.

The conclusion reached by the Versailles Court of Appeal as upheld by the Court of Cassation, which had placed a disproportionate restriction on the right of access to a tribunal, was therefore manifestly unreasonable in that connection.

There had therefore been a violation of Article 6 § 1 of the Convention in respect of the association MIRABEL-LNE.

Article 10

The Court noted that all the applicant associations' allegations concerned the right to information in the sphere of environmental risks and compliance with procedural safeguards in that context. Being master of the legal characterisation of the facts, the Court decided to examine them under Article 10.

The Court observed that although Article 10 of the Convention did not confer a general right of access to information held by the authorities, it could, to some extent and under certain conditions, guarantee a right of that nature and could require the authorities to communicate information (see [Magyar Helsinki Bizottság v. Hungary](#)). That also applied to access to information concerning projects whose implementation was liable to have an impact on the environment (see *Cangi v. Turkey*).

The right of access to information would be rendered nugatory if the information supplied were dishonest, inaccurate or insufficient. Respect for the right of access to information required the information provided to be reliable, particularly where the right stemmed from a legal obligation on the State, and that in the event of a dispute in that regard, those concerned should have a remedy providing for review of the content and quality of the information provided, in the framework of adversarial proceedings.

Access to such review was particularly important in the case of information concerning a project presenting a major environmental risk such as a nuclear hazard. There was a genuine direct link between the geothermal potential of the Bure site covered by the impugned communique from ANDRA and the nuclear risk posed by the *Cigéo* project.

In the instant case, the applicant associations had taken ANDRA to court seeking compensation for the damage stemming from its culpable failure to honour its obligation to inform the public. Although the associations' action had been declared inadmissible at first instance, it had been declared admissible on appeal in respect of the associations Burestop 55, ASODEDRA, Fédération Réseau Sortir du Nucléaire and Les Habitants vigilants du Canton de Gondrecourt, as well as the collective CEDRA 52.

Following adversarial proceedings, the Versailles Court of Appeal had held that no gross negligence had been committed.

The Court of Appeal had ruled that ANDRA had quite rightly argued that the results of its work had been corroborated by all its institutional partners, thus referring to the opinions of the nuclear safety authority, the Institute for radiation protection and nuclear safety and the national evaluation committee. The Court of Appeal further held that the divergence of opinion on the technical aspects discussed had been insufficient in itself to conclude that ANDRA had been incompetent, negligent or biased in the position which it had put forward, and that the fact of issuing, in the wake of in-depth studies, conclusions favourable to the installation of *Cigéo* could not be wrongful *per se*. The Court then noted that the applicant associations had been able to challenge the appellate judges' decision under an appeal on points of law. The Court of Cassation found that the Court of Appeal had legally reasoned its decision.

Five of the six applicant associations – Burestop 55, ASODEDRA, Fédération Réseau Sortir du Nucléaire, Les Habitants vigilants du Canton de Gondrecourt and the CEDRA 52 collective – had therefore been able to lodge appeals with the domestic courts such that, in the framework of fully adversarial proceedings, they had secured effective review of ANDRA's compliance with its legal obligation to provide the public with information on the management of radioactive waste and of the content and quality of the information communicated by ANDRA concerning the geothermal

potential of the Bure site. The reasoning of the appellate court's judgment was not in fact beyond criticism. The Court considered that it would have been better if the appellate judges had more fully substantiated their reply to the applicant associations' contestation of the reliability of the information set out in ANDRA's consolidated report of 21 July 2009 concerning the low level of the geothermal resources in the area in question. However, that was insufficient to cast doubt on the finding that the five aforementioned associations had had access to a remedy that met the requirements of Article 10 of the Convention.

There had therefore been no violation of Article 10 of the Convention in respect of the associations Burestop 55, ASODEDRA, Fédération Réseau Sortir du Nucléaire, Les Habitants vigilants du Canton de Gondrecourt and the CEDRA 52 collective.

As regards the association MIRABEL-LNE, the Court had already found that the fact that its appeal had been declared inadmissible by the Versailles Court of Appeal had amounted to a violation of Article 6 § 1. Consequently, it held that it was unnecessary to consider whether that circumstance had amounted to a breach of the procedural limb of Article 10.

Just satisfaction (Article 41)

The Court held that France was to pay the applicant association MIRABEL-LNE 3,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,713 in respect of costs and expenses.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.