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

CASE OF L.C.B. v. THE UNITED KINGDOM

(14/1997/798/1001)

JUDGMENT

STRASBOURG

9 June 1998

In the case of L.C.B. v. the United Kingdom[1],

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A[2], as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,
Mr F. GÖLCÜKLÜ,
Mr F. MATSCHER,
Mr I. FOIGHEL,
Sir John FREELAND,
Mr M.A. LOPES ROCHA,
Mr B. REPIK,
Mr K. JUNGWIERT,
Mr J. CASADEVALL,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 29 November 1997 and 3 February and 21 May 1998,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 22 January 1997, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 23413/94) against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission under Article 25 by Ms L.C.B., a British national, on 21 April 1993.

The Commission's request referred to Articles 44 and 48 and to the declaration whereby the United Kingdom recognised the compulsory jurisdiction of the Court (Article 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 2 and 3 of the Convention.

Notes by the Registrar

1. The case is numbered 14/1997/798/1001. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of Rules of Court A, the applicant stated that she wished to take part in the proceedings and designated the lawyer who would represent her (Rule 30). On 27 February 1997 the President of the Court, Mr R. Ryssdal, authorised this lawyer to represent the applicant despite the fact that he was not resident in one of the Contracting States (Rule 30 § 1), and also granted her request to be known by the initials L.C.B. for the purposes of the proceedings before the Court.

3. The Chamber to be constituted included *ex officio* Sir John Freeland, the elected judge of British nationality (Article 43 of the Convention), and the President of the Court (Rule 21 § 4 (b)). On 21 February 1997, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr F. Matscher, Mr B. Walsh, Mr I. Foighel, Mr B. Repik, Mr K. Jungwiert and Mr J. Casadevall (Article 43 *in fine* of the Convention and Rule 21 § 5).

4. As President of the Chamber (Rule 21 § 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the United Kingdom Government ("the Government"), the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 § 1 and 38). Pursuant to the order made in consequence on 25 March 1997, the Registrar received the applicant's and the Government's memorials on 2 October 1997.

5. On 31 October 1997, the President granted the applicant leave to submit further written observations (Rule 37 § 1 *in fine)*, which were received by the Registrar on 18 November 1997.

6. On 21 November 1997, Mr R. Bernhardt, Vice-President of the Court, replaced, as President of the Chamber, Mr Ryssdal, who was unable to take part in the further consideration of the case (Rule 21 § 5).

7. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 26 November 1997. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*

Mr M. EATON, Foreign and Commonwealth Office, *Agent*,
Mr J. EADIE, Barrister-at-Law,
Mr N. LAVENDER, Barrister-at-Law, *Counsel*,
Mrs J. ALEXANDER, Ministry of Defence,
Mr T. WILSON, Ministry of Defence,
Mr D. SMITH, Department of Social Security,
Dr C. SHARP, National Radiological Protection Board, *Advisers*;

(b) *for the Commission*
Mrs J. LIDDY, *Delegate*;

(c) *for the applicant*
Mr I. ANDERSON, *Advocate*, *Counsel*.

The Court heard addresses by Mrs Liddy, Mr Anderson and Mr Eadie.

8. On 2 December 1997 the Chamber granted the Government leave to submit further written observations (Rule 37 § 1 *in fine*). These were received by the Registrar on 30 January 1998. The applicant's submissions in reply were received on 9 March 1998.

9. Subsequently, Mr M.A. Lopes Rocha, substitute judge, replaced as a full member of the Chamber Mr Walsh, who had died (Rule 22 § 1).

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The Christmas Island nuclear tests

10. Between 1952 and 1967 the United Kingdom carried out a number of atmospheric tests of nuclear weapons in the Pacific Ocean and at Maralinga, Australia, involving over 20,000 servicemen. Among these tests were the "Grapple Y" and "Grapple Z" series of six detonations at Christmas Island in the Pacific Ocean (November 1957–September 1958) of weapons many times more powerful than those discharged at Hiroshima and Nagasaki.

11. During the Christmas Island tests, service personnel were ordered to line up in the open and to face away from the explosions with their eyes closed and covered until twenty seconds after the blast.

The applicant alleged that the purpose of this procedure was deliberately to expose servicemen to radiation for experimental purposes. The Government denied this and stated that it was believed at the time of the tests, and was the case, that personnel were sufficiently far from the centre of the detonations to avoid being exposed to radiation at any harmful level

and that the purpose of the line-up procedure was to ensure that they avoided eye damage and other physical injury caused by material blown about by the blast.

B. The particular circumstances of the applicant's case

12. While the applicant's father was serving as a catering assistant in the Royal Air Force, he was present at Christmas Island during four nuclear tests in 1957 and 1958. He also participated in the clean-up programme following the tests.

13. The applicant was born in 1966. In or about 1970 she was diagnosed as having leukaemia, a cancerous disease of the organs which manufacture blood. Her records of admission to hospital state, under the heading "Summary of Possible Causative Factors", "Father – Radiation exposure".

14. The applicant received chemotherapy treatment which lasted until she was 10 years old. Because of her illness and associated treatment she missed half of her primary school education and was unable to participate in sports or other normal childhood activities.

15. In December 1992 the applicant became aware of the contents of a report prepared by the British Nuclear Tests Veterans' Association ("BNTVA") indicating a high incidence of cancers including leukaemia in the children of Christmas Island veterans. The applicant is a member of the BNTVA.

16. She still has regular medical check-ups and is afraid to have children of her own in case they are born with a genetic predisposition to leukaemia.

II. RELEVANT DOMESTIC LAW AND PRACTICE

Reay and *Hope v. British Nuclear Fuels PLC*

17. In 1983 an Independent Advisory Group, chaired by Sir Douglas Black, was set up in the United Kingdom to investigate reports of an abnormally high number of children contracting leukaemia in the area around the nuclear power reactor at Sellafield (formerly called Windscale) in northern England. The Group confirmed that childhood leukaemia was more common in this area than normal, but was not able to determine the reason for this. One of the members of the Group, Dr Martin Gardner, went on to conduct three studies into the phenomenon. The third, published on 17 February 1990 ("the Gardner Report"), found a statistical association

between the incidence of leukaemia in children from the town of Seascale, near Sellafield, and relatively high recorded doses of external whole-body radiation received by their fathers employed at the nuclear power plant prior to conception.

18. Following the publication of this report, two cases were brought against the authority responsible for the Sellafield reactor by plaintiffs who had contracted leukaemia and non-Hodgkin's lymphoma respectively, claiming that their fathers' employment at Sellafield had caused their illnesses. The two cases were heard concurrently in the High Court of Justice, London, on ninety days between October 1992 and June 1993. Over thirty expert witnesses gave oral evidence before the court and approximately one hundred written reports were submitted, primarily directed at the question whether the statistical association found by Dr Gardner could be relied upon and was directly causal, as claimed by the plaintiffs.

19. Judgment was given by Mr Justice French on 8 October 1993.

He found, *inter alia*, that the Gardner Report was "a good study, well carried out and presented". However, certain technical criticisms which had been made of it were valid so as to diminish confidence in its conclusions and underline the need to seek confirmation from other independent studies before relying on it. He did, however, find that the evidence bore out a strong prima facie association between paternal preconceptional irradiation and childhood leukaemia in Seascale, although considerable reserve was necessary before it could be concluded that there was a causal link.

Although the judge was content to assume that there was a heritable component to the plaintiffs' diseases, he considered that this was very small. He placed particular reliance on studies of the children of survivors of the Nagasaki and Hiroshima bombings, which did not show any significant increase in leukaemia or non-Hodgkin's lymphoma, and were therefore quite inconsistent with the Gardner hypothesis. One of the defendant's witnesses, Sir Richard Doll, had referred to research emphasising the role of infection in causing childhood leukaemia, particularly in areas where unusual population mixing had occurred, as was the case in Seascale, which had a very mobile population of high socio-economic class situated in a remote rural area. The judge found that a theory of causation based on such factors, combined with chance, was no less plausible than the Gardner hypothesis.

In conclusion, he held that, "on the evidence before me, the scales tilt decisively in favour of the defendants, and the plaintiffs, therefore, have failed to satisfy me on the balance of probabilities that paternal preconceptional radiation was a material contributory cause of the Seascale excess or, it must follow, of [their diseases]" (*Reay v. British Nuclear Fuels PLC; Hope v. British Nuclear Fuels PLC* [1994] 5 Medical Law Reports 1-55; and see also 'Childhood leukaemia and Sellafield: the legal cases', *Journal of Radiological Protection*, vol. 14, no. 4, pp. 293–316).

III. THE UNITED KINGDOM'S ARTICLES 25 AND 46 DECLARATIONS

20. On 14 January 1966 the United Kingdom lodged with the Secretary General of the Council of Europe the following declaration:

> "… in accordance with the provisions of Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on the 4th of November 1950, … the Government of the United Kingdom of Great Britain and Northern Ireland recognise, in respect of the United Kingdom of Great Britain and Northern Ireland only …, for the period beginning on the 14th of January 1966, and ending on the 13th of January 1969, the competence of the European Commission of Human Rights to receive petitions submitted to the Secretary General of the Council of Europe, subsequently to the 13th of January 1966, by any person, non-governmental organisation or group of individuals claiming, in relation to any act or decision occurring or any facts or events arising subsequently to the 13th of January 1966, to be the victim of a violation of the rights set forth in that Convention and in the Protocol thereto…"

A declaration under Article 46 of the Convention, recognising the Court's jurisdiction subject to similar conditions, was filed on the same day. Both declarations have been renewed on several occasions subsequently.

PROCEEDINGS BEFORE THE COMMISSION

21. In her application to the Commission (no. 23413/94) of 21 April 1993, the applicant complained under Articles 2 and 3 of the Convention that she had not been warned of the effects of her father's alleged exposure to radiation, which prevented pre- and post-natal monitoring that would have led to earlier diagnosis and treatment of her illness. In addition, she claimed to have been subjected to harassment and surveillance, in breach of Article 8.

22. On 28 November 1995 the Commission declared the application admissible in so far as it related to the complaints under Articles 2 and 3 about failure to advise and inform the applicant's parents about her father's alleged exposure to radiation. In its report of 26 November 1996, (Article 31), it expressed the unanimous opinion that there had been no violations of Articles 2 and 3. The full text of the Commission's opinion and of the concurring opinion contained in the report is reproduced as an annex to this judgment[1].

FINAL SUBMISSIONS TO THE COURT

23. The Government, in their written and oral pleadings, asked the Court to find no violation of the Convention.

The applicant asked the Court to find violations of Articles 2, 3, 8 and 13 of the Convention, and to award her damages under Article 50.

AS TO THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 2 OF THE CONVENTION

24. Before the Court, the applicant claimed that both the State's failure to warn her parents of the possible risk to her health caused by her father's participation in the nuclear tests, and its earlier failure to monitor her father's radiation dose levels, gave rise to violations of Article 2 of the Convention, which provides, in paragraph 1:

> "Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law."

1. *Note by the Registrar*. For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1998), but a copy of the Commission's report is obtainable from the registry.

A. Arguments of those appearing before the Court

1. The applicant

25. The applicant maintained that the respondent State had deliberately exposed her father and the other servicemen stationed on Christmas Island to radiation for experimental purposes. In support of this contention, she referred to a number of documents, including a 1953 report of the British Defence Research Policy Committee on Atomic Weapons, which requested tests to be carried out during future atomic weapons trials on the effects of different types of explosion on "men with and without various types of protection"; a 1955 Royal Air Force ("RAF") memorandum which stated that "during the 1957 trials [in Maralinga, Australia] the RAF will gain invaluable experience in handling the weapons and demonstrating at first hand the effects of nuclear explosions on personnel and equipment"; and a 1957 War Office circular, again related to the tests in Australia, which stated that "all personnel selected for duty at Maralinga may be exposed to radiation in the course of their military duties".

26. She stated that, as early as 1946, serious concern had been expressed, for example in letters to the *Lancet* (a leading British medical journal), about the genetic effects of radiation. In 1947, the Medical Research Council of Great Britain ("MRC")'s Committee on the Medical and Biological Applications of Nuclear Physics had reported that "all quantitative experiments show that even the smallest doses of radiation produce a genetic effect…". In 1956 the MRC found, *inter alia*, that "doses of radiation which are of no known significance to the individual may have genetic consequences" and recommended, in connection with those exposed to radiation used for medical or industrial purposes, that "a personal record … should be kept for all persons whose occupation exposes them to additional sources of radiation".

27. She alleged that, despite or because of this evidence, in order to avoid liability for any subsequent health problems caused by the Christmas Island tests, the military authorities had decided not to monitor the servicemen's individual radiation dose levels or to provide them with any information as to the possible health consequences, for themselves and their future offspring, of their presence on the island. It could not, therefore, be known with any certainty whether or not her father had been exposed to dangerous levels of radiation. However, a report prepared by Mr J.H. Large,

a chartered engineer who had studied, *inter alia*, a number of photographs of the detonation on Christmas Island of 28 April 1958 ("Grapple Y"), suggested that this bomb was detonated at approximately 1,000 to 1,250 metres above ground, which would have resulted in a substantial mass of surface debris being swept up, subjected to intense irradiation, and then, depending on meteorological conditions, possibly scattered as radioactive fall-out over a radius of 50 to 100 miles.

28. The applicant considered that her father's unmonitored exposure to radiation was the probable cause of her childhood leukaemia.

She submitted that the decision in *Reay* and *Hope v. British Nuclear Fuels PLC* (see paragraph 19 above) was not conclusive, for a number of reasons. First, the judge had been wrong to rely on the results of the studies of the children of Hiroshima and Nagasaki survivors, since these studies had depended on acquiring information from a foreign and hostile population in the chaotic conditions following the bombings. Moreover, the studies had only acquired data over a four-year period (1947–51), whereas childhood leukaemia had its highest mortality rate in the first five years of life. Secondly, she pointed out that the plaintiffs' leading expert witness, Professor T. Nomura, whose five reports on radiation-induced transgenerational carcinogenesis in mice were admitted in evidence, had been unable to attend to give oral evidence at the hearing.

She submitted that subsequent research had confirmed the correctness of the Gardner hypothesis (see paragraph 17 above). For example, a study carried out by members of the Russian Academy of Sciences, the Mogilev Research Institute for Radiation Medicine and the University of Leicester Genetics Department had found a 50% increase in genetic mutations in children born in 1994 to parents exposed to radiation following the 1986 Chernobyl disaster, and British and American researchers had found an association between medical X-ray exposures of male patients and lower birth weight in their offspring ('Human minisatellite mutation rate after the Chernobyl accident', *Nature*, vol. 380, pp. 683–86; 'Association between preconception parental X-ray exposure and birth outcome', *American Journal of Epidemiology*, vol. 145, no. 6, pp. 546–51). In addition, a report prepared for the BNTVA in 1992 had found that one in five of the 1,454 nuclear test veterans included in the survey had children with illnesses or defects which could have had a genetic origin.

29. The applicant claimed that, had the State provided her parents with information regarding the extent of her father's exposure to radiation and the risks which this engendered, and monitored her health from infancy, it

would have been possible to diagnose her leukaemia earlier and to provide her with treatment which could have alleviated the risk to her life. She provided the Court with the report of Dr Irwin Bross, former Director of Biostatistics at Roswell Park Memorial Institute for Cancer Research (New York), which stated that, by the early 1960s, treatments had been developed in the United States, and were coming into world-wide use, which had been proved successful in clinical trials in producing prolonged remissions in childhood leukaemia. Dr Bross considered that, depending on the attitude of the doctors who attended the applicant, such treatment could have been commenced at first diagnosis, which could have avoided the life-threatening stage of the disease.

In the applicant's comments in response to Professor Eden's report (see paragraphs 8 above and 33 below), Dr Bross emphasised that it could not at this stage be known whether Ms L.C.B. should have been diagnosed with the myeloid or the lymphatic form of leukaemia, and that, had she in fact suffered from acute lymphatic leukaemia, this would destroy the basis of Professor Eden's conclusion that earlier detection and intervention would not have improved her prognosis.

2. The Government

30. The Government submitted that they could not be held responsible for alleged breaches of the Convention which occurred prior to 14 January 1966, when the United Kingdom recognised the competence of the Commission to receive individual petitions and the jurisdiction of the Court (see paragraph 20 above). Between that date and October 1970, when the applicant was diagnosed with leukaemia, the State authorities had had no cause to give advice or information to her parents, for the following reasons.

31. In the first place, there was no reason to believe that her father had been exposed to dangerous levels of radiation, as was shown by contemporaneous samples of environmental radiation taken on Christmas Island. Contrary to Mr Large's assessment (see paragraph 27 above), the Grapple Y detonation at Christmas Island had taken place at 2,500 metres above ground level. At that height, any fall-out would have passed rapidly into the upper atmosphere to be distributed over a number of months as global fall-out. There had certainly been no intent to expose the servicemen to radiation: an experiment of the kind alleged would have been not only scandalous, but also pointless, since by the 1950s a considerable amount of information about the effects of radiation on the human body had already been derived from the survivors of the Hiroshima and Nagasaki bombs. The documents relied on by the applicant in this connection had been presented out of context and did not support the implications she had sought to draw from them.

32. In any case, they submitted that the best scientific interpretation of the available evidence was that it did not support the existence of any causative link between the exposure of parents to radiation and the onset of leukaemia in their children. The most substantial study on the subject was that of 30,000 children born to survivors of the Hiroshima and Nagasaki bombs between 1946 and 1982, which found no statistically significant increase in leukaemia. The studies relied on by the applicant in this respect were by no means conclusive. Moreover, the High Court judge, sitting in the cases of *Reay* and *Hope v. British Nuclear Fuels PLC* (see paragraph 19 above), having considered the reports of one hundred expert witnesses and the oral evidence of thirty, decided that the causal link between preconception parental radiation and leukaemia in children had not been established.

33. Finally, in response to the evidence of Dr Bross (see paragraph 29 above), the Government submitted a report by Professor Osborn B. Eden, Professor of Paediatric Oncology at the University of Manchester, who stated that Dr Bross's comments applied essentially to acute lymphatic leukaemia, rather than the form of the disease with which the applicant appeared to have been diagnosed in 1970, namely acute myeloid leukaemia (although, with the passage of time, it was not possible to ascertain whether this had been the correct diagnosis). From an extensive review of the literature, he could find no evidence to support the proposition that truly effective treatment was available for acute myeloid leukaemia throughout the 1960s. Moreover, he did not consider that an earlier diagnosis could have been made or that it would have made any difference to the outcome.

3. The Commission

34. The Commission, which had not had the benefit of seeing the reports of either Dr Bross or Professor Eden, found that the applicant had not demonstrated that earlier diagnosis and treatment of her disease could have altered its fatal nature or alleviated her physical or mental suffering in any way. Accordingly, whether or not Article 2 was applicable, her complaints did not disclose a violation.

B. The Court's assessment

1. Scope of the case under Article 2

35. The Court observes that the applicant's complaint about the failure of the respondent State to monitor the extent of her father's exposure to radiation on Christmas Island was not raised before the Commission (see paragraph 21 above). It reiterates that the scope of its jurisdiction is determined by the Commission's decision on admissibility, it having no power to entertain new and separate complaints not raised before the Commission (see, *inter alia*, the Findlay v. the United Kingdom judgment of 25 February 1997, *Reports of Judgments and Decisions* 1997-I, pp. 277-78, § 63). In any case, this complaint is based on events which took place in 1958, before the United Kingdom's Articles 25 and 46 declarations of 14 January 1966 (see paragraph 20 above).

It follows that the Court has no jurisdiction to consider it.

2. Assessment of the complaint concerning failure to take measures in respect of the applicant

36. The applicant complained in addition that the respondent State's failure to warn and advise her parents or monitor her health prior to her diagnosis with leukaemia in October 1970 had given rise to a violation of Article 2 of the Convention.

In this connection, the Court considers that the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (cf. the Court's reasoning in respect of Article 8 in the Guerra and Others v. Italy judgment of 19 February 1998, *Reports* 1998-I, p. 227, § 58, and see also the decision of the Commission on the admissibility of application no. 7154/75 of 12 July 1978, Decisions and Reports 14, p. 31). It has not been suggested that the respondent State intentionally sought to deprive the applicant of her life. The Court's task is, therefore, to determine whether, given the circumstances of the case, the State did all that could have been required of it to prevent the applicant's life from being avoidably put at risk.

37. The Court notes that the applicant's father was serving as a catering assistant on Christmas Island at the time of the United Kingdom's nuclear tests there (see paragraph 12 above). In the absence of individual dose measurements, it cannot be known with any certainty whether, in the course of his duties, he was exposed to dangerous levels of radiation. However, the

Court observes that it has not been provided with any evidence to prove that he ever reported any symptoms indicative of the fact that he had been exposed to above-average levels of radiation.

The Court has examined the voluminous evidence submitted by both sides relating to the question whether or not he was so exposed. It notes in particular that records of contemporaneous measurements of radiation on Christmas Island (see paragraph 31 above) indicate that radiation did not reach dangerous levels in the areas in which ordinary servicemen were stationed. Perhaps more importantly for the issues under Article 2, these records provide a basis to believe that the State authorities, during the period between the United Kingdom's recognition of the competence of the Commission to receive applications on 14 January 1966 and the applicant's diagnosis with leukaemia in October 1970, could reasonably have been confident that her father had not been dangerously irradiated.

38. Nonetheless, in view of the lack of certainty on this point, the Court will also examine the question whether, in the event that there was information available to the authorities which should have given them cause to fear that the applicant's father had been exposed to radiation, they could reasonably have been expected, during the period in question, to provide advice to her parents and to monitor her health.

The Court considers that the State could only have been required of its own motion to take these steps in relation to the applicant if it had appeared likely at that time that any such exposure of her father to radiation might have engendered a real risk to her health.

39. Having examined the expert evidence submitted to it, the Court is not satisfied that it has been established that there is a causal link between the exposure of a father to radiation and leukaemia in a child subsequently conceived. As recently as 1993, the High Court judge sitting in the cases of *Reay* and *Hope v. British Nuclear Fuels PLC*, having examined a considerable amount of expert evidence, found that "the scales tilt[ed] decisively" in favour of a finding that there was no such causal link (see paragraph 19 above). The Court could not reasonably hold, therefore, that, in the late 1960s, the United Kingdom authorities could or should, on the basis of this unsubstantiated link, have taken action in respect of the applicant.

40. Finally, in the light of the conflicting evidence of Dr Bross and Professor Eden (see paragraphs 29 and 33 above), and as the Commission also found (see paragraph 34 above), it is clearly uncertain whether monitoring of the applicant's health *in utero* and from birth would have led to earlier diagnosis and medical intervention such as to diminish the severity of her disease. It is perhaps arguable that, had there been reason to believe that she was in danger of contracting a life-threatening disease owing to her father's presence on Christmas Island, the State authorities would have been under a duty to have made this known to her parents whether or not they

considered that the information would assist the applicant. However, this is not a matter which the Court is required to decide in view of its above findings (see paragraphs 38–39).

41. In conclusion, the Court does not find it established that, given the information available to the State at the relevant time (see paragraph 37 above) concerning the likelihood of the applicant's father having been exposed to dangerous levels of radiation and of this having created a risk to her health, it could have been expected to act of its own motion to notify her parents of these matters or to take any other special action in relation to her.

It follows that there has been no violation of Article 2.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

42. The applicant complained that the matters referred to in connection with Article 2 amounted in addition to ill-treatment contrary to Article 3 of the Convention, which provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

43. For the reasons referred to in connection with Article 2 (see paragraph 41 above), the Court does not find it established that there has been a violation by the respondent State of Article 3.

III. ALLEGED VIOLATIONS OF ARTICLES 8 AND 13 OF THE CONVENTION

44. The applicant complained before the Court that the State's failure to measure her father's individual exposure to radiation and its withholding of contemporaneously produced records of the levels of radiation on Christmas Island constituted violations of Articles 8 and 13 of the Convention, which provide respectively:

Article 8

> "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 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."

Article 13

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

45. The Court recalls that these complaints were not raised before the Commission (see paragraph 21 above). It therefore has no jurisdiction to consider them (see paragraph 35 above).

46. The Court observes that, in principle, it would be open to it to consider in relation to Article 8 the applicant's complaint regarding the State's failure of its own motion to advise her parents and monitor her health prior to her diagnosis with leukaemia (see the above-mentioned Guerra and Others judgment, pp. 222–24, §§ 39–46). However, having examined this question from the standpoint of Article 2, it does not consider that any relevant separate issue could arise under Article 8, and it therefore finds it unnecessary to examine further this complaint.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that it has no jurisdiction to consider the applicant's complaint under Article 2 of the Convention concerning the State's failure to monitor the extent of her father's exposure to radiation on Christmas Island;

2. *Holds* that there has been no violation of Article 2 of the Convention in relation to the State's failure to advise the applicant's parents and monitor her health prior to her diagnosis with leukaemia;

3. *Holds* that there has been no violation of Article 3 of the Convention;

4. *Holds* that it has no jurisdiction to consider the applicant's complaints under Articles 8 and 13 of the Convention concerning the State's failure to create individual dose records of her father's exposure to radiation and the withholding of contemporaneous records of levels of radiation on Christmas Island;

5. *Holds* that it is not necessary to consider also from the standpoint of Article 8 of the Convention the complaint concerning the State's failure to advise the applicant's parents and monitor her health prior to her diagnosis with leukaemia.

Done in English[1], and delivered at a public hearing in the Human Rights Building, Strasbourg, on 9 June 1998.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar

1. *Note by the Registrar*: as a derogation from the usual practice (Rule 27 § 5 of Rules of Court A), the French text was not available until 18 June 1998, but it too is authentic.