

## **PRESUMPTION OF INNOCENCE**

Organisation by a security directorate of a press conference concerning the arrest of members of an illegal organisation: *communicated*.

### **GULER and CALISKAN - Turkey** (N° 52746/99)

[Section III]

In June 1997, the first applicant was remanded in custody for belonging to the Organisation of the 4<sup>th</sup> left Bolshevik-Trotskyites, which was considered illegal. A few days later, the Police Department of the Ministry of the Interior in Ankara organised a press conference during which he was presented as being among the persons being questioned in the context of an operation directed against the illegal organisation. In September 1997 the second applicant was also arrested. In 1998 the National Security Court declared the applicants guilty of belonging to the illegal organisation and of illegal activities under the provisions of anti-terrorist legislation, and sentenced each of them to a term of imprisonment and a fine. In March 1999 the Court of Cassation upheld the judgment on appeal.

*Communicated* under Article 6(1) (composition of a National Security Court) and Article 6(2) as regards the first applicant.

<b>ARTICLE 8</b>
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## **PRIVATE LIFE**

Refusal to divulge identity of biological parents: *no violation*.

### **ODIEVRE - France** (N° 42326/98)

Judgment 13.2.2003 [Grand Chamber]

*Facts:* The applicant was born in 1965. She was abandoned by her natural mother at birth and left with the Health and Social Security Department. Her mother requested that her identity be kept secret from the applicant, who was placed in State care and later adopted under a full adoption order. The applicant subsequently tried to find out the identity of her natural parents and brothers, but was only able to obtain non-identifying information about her natural family.

*Law:* Preliminary objection (failure to exhaust domestic remedies) – Even at the merits stage and subject to Rule 55 of the Rules of Court, the Grand Chamber could reconsider a decision to declare an application admissible if it concluded that it should have been declared inadmissible for one of the reasons given in the first three paragraphs of Article 35 of the Convention. No criticism could attach to the applicant in the case before the Court for failing to take her complaint to the administrative courts, since, as the Government had admitted, such an application would have been bound to fail under the relevant legislation. Nor could the applicant be held to task for failing to plead a violation of her rights under Article 8 of the Convention, as those rights were not recognised in domestic law at the material time and had only become so, subject to certain conditions, after legislation was passed almost four years after the application to the Commission was lodged. The Grand Chamber therefore saw no reason to reconsider the decision to reject the preliminary objection which had been raised before the Chamber: preliminary objection dismissed (unanimously).

Article 8 – (a) Applicability: The applicant's purpose was to find out the circumstances in which she had been born and abandoned, including the identity of her natural parents and brothers. Birth, and in particular the circumstances in which the child was born, formed part of the child's, and subsequently the adult's, private life guaranteed by Article 8 of the Convention, which was therefore applicable in the case before the Court.

(b) Respect for private life: People had a vital interest, which was protected by the Convention, in receiving the information necessary to know and to understand their childhood and early development. The expression “everyone” in Article 8 of the Convention applied to both the child and the mother. The right to know one’s origins was derived from a wide interpretation of the scope of the notion of private life. The child’s vital interest in its personal development was also widely recognised in the general scheme of the Convention. On the other hand, a woman’s interest in remaining anonymous in order to protect her health by giving birth in appropriate medical conditions had to be recognised. The case concerned the private interests of two adults that were not easily reconcilable. The problem of anonymous births also raised the issue of the protection of third parties, essentially the adoptive parents, the father and the other members of the natural family, each of whom also had a right to respect for his or her private and family life. The French legislation also sought to protect the general interest and the right to respect for life. In these circumstances, the State’s margin of appreciation had to be taken into account; in principle, included within the margin was the choice of the means calculated to secure compliance with Article 8 in the sphere of the relations of individuals between themselves. Most of the States did not have legislation comparable to that applicable in France, at least as regards the child’s permanent inability to establish parental ties with a natural mother who insisted on keeping her identity secret from the child she had brought into the world. However, some countries did not impose a duty on natural parents to declare their identities on the birth of their children and there had been cases of child abandonment in several others. In the light of that diversity of practice, States had to be afforded a margin of appreciation to decide which measures were apt to ensure that the rights guaranteed by the Convention were secured to everyone within their jurisdiction. The applicant had been given access to non-identifying information about her mother and natural family that enabled her to trace some of her roots, while ensuring the protection of third-party interests. In addition, recent legislation enacted on 22 January 2002 enabled confidentiality to be waived and set up a special body to facilitate searches for information about biological origins. The applicant could now use that legislation to request disclosure of her mother’s identity, subject to the latter’s consent being obtained to ensure that the mother’s need for protection and the applicant’s legitimate request were fairly reconciled. The French legislation thus sought to strike a balance and to ensure sufficient proportion between the competing interests. The States had to be allowed to determine the means they considered best suited to achieve the aim of reconciling those interests. Thus, France had not overstepped the margin of appreciation it had to be afforded in view of the complex and sensitive nature of the issue of access to information about one’s origins, which concerned such matters as the right to know one’s personal history, the choices of the natural parents, the existing family ties and the adoptive parents.

*Conclusion:* no violation (ten votes to seven).

Article 14, taken together with Article 8 – The applicant had argued that, owing to her inability to find out her natural mother’s identity, she had been a victim of restrictions on her capacity to receive property from her. That complaint was in practice the same as the complaint examined under Article 8. In summary, the applicant had suffered no discrimination with regard to her filiation, as, firstly, she had parental ties with her adoptive parents and a prospective interest in their property and estate and, secondly, she could not claim that her situation with regard to her natural mother was comparable to that of children who enjoyed established parental ties with their natural mother.

*Conclusion:* no violation (ten votes to seven).

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