COURT (CHAMBER)
CASE OF LE COMPTE, VAN LEUVEN AND DE MEYERE v. BELGIUM
(Application no. 6878/75; 7238/75)
JUDGMENT
STRASBOURG
23 June 1981

In the case of Le Compte, Van Leuven and De Meyere,
The European Court of Human Rights, taking its decision in plenary session in application of Rule 48 of the Rules of Court and composed of the following judges:
Mr. G. WIARDA, President,
Mr. R. RYSSDAL,
Mr. H. MOSLER,
Mr. M. ZEKIA,
Mr. J. CREMONA,
Mr. THÓR VILHJÁLMSSON,
Mrs. D. BINDSCHEDLER-ROBERT,
Mr. D. EVRIGENIS,
Mr. G. LAGERGREN,
Mr. L. LIESCH,
Mr. F. GÖLCÜKLÜ,
Mr. F. MATSCHER,
Mr J. PINHEIRO FARINHA,
Mr. E. GARCIA de ENTERRIA,
Mr. M. SØRENSEN,
Mr. L.-E. PETTITI,
Mr. B. WALSH,
Sir VINCENT EVANS,
Mr. R. MACDONALD,
Mr. A. VANWELKENHUYZEN, ad hoc judge,
and also Mr. M.-A. EISSEN, Registrar, and Mr. H. PETZOLD, Deputy Registrar,
Having deliberated in private from 26 to 28 November 1980 and then on 29 and 30 January and 27 May 1981,
Delivers the following judgment, which was adopted on the last-mentioned date:
PROCEDURE
1. The case of Le Compte, Van Leuven and De Meyere was referred to the Court by the European Commission of Human Rights ("the Commission") and the Government of the Kingdom of Belgium ("the Government"). The case originated in two applications against that State lodged with the Commission in 1974 and 1975 by three Belgian nationals, Dr. Herman Le Compte, Dr. Frans Van Leuven and Dr. Marc De Meyere, under Article 25 (art. 25) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). The Commission ordered the joinder of the applications on 10 March 1977.
2. Both the Commission’s request and the Government’s application were lodged with the registry of the Court within the period of three months laid down by Articles 32 par. 1 and 47 (art. 32-1, art. 47) - the former on 14 March 1980 and the latter on 23 April 1980. The request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration made by the Kingdom of Belgium recognising the compulsory jurisdiction of the Court (Article 46) (art. 46); the application referred to Article 48 (art. 48). The purpose of the request and the application is to obtain a decision from the Court as to whether or not the facts of the case disclose a breach by the respondent State of its obligations under Articles 6 and 11 (art. 6, art. 11).
3. Mr. W. Ganshof van der Meersch, the elected judge of Belgian nationality, was called upon to sit as an ex officio member of the Chamber of seven judges to be constituted (Article 43 of the Convention) (art. 43). However, by letter dated 21 March 1980, he declared that he withdrew pursuant to Rule 24 par. 2 of the Rules of Court. On 9 April, the Government appointed as ad hoc judge Mr. A. Vanwelkenhuyzen, Professor at the Free University of Brussels (Article 43 of the Convention and Rule

23 par. 1) (art. 43).
On 29 April, Mr. G. Balladore Pallieri, the President of the Court and an ex officio member of the Chamber (Rule 21 par. 3 (b)), drew by lot, in the presence of the Registrar, the names of the five other members, namely Mr. G. Wiarda, Mr. R. Ryssdal, Sir Gerald Fitzmaurice, Mrs. D. Bindschedler-Robert and Mr. L. Liesch (Article 43 in fine of the Convention and Rule 21 par. 4) (art. 43).
4. Mr. Balladore Pallieri assumed the office of President of the Chamber (Rule 21 par. 5). He ascertained, through the Registrar, the views of the Agent of the Government and the Delegates of the Commission regarding the procedure to be followed. On 23 May 1980, he decided that the Agent should have until 15 August 1980 to file a memorial and that the Delegates should be entitled to file a memorial in reply within two months from the date of the transmission of the Government's memorial to them by the Registrar.
The Government's memorial was received at the registry on 20 August 1980. On 22 October, the Secretary to the Commission informed the Registrar that the Delegates would reply thereto at the hearings; he also transmitted to the Registrar the observations of the applicants' lawyer on the Commission's report.
5. On 1 October 1980, the Chamber decided under Rule 48 to relinquish jurisdiction forthwith in favour of the plenary Court.
6. After consulting, through the Registrar, the Agent of the Government and the Delegates of the Commission, the President of the Court directed on 7 October that the oral proceedings should open on 25 November.
7. The oral hearings were held in public at the Human Rights Building, Strasbourg, on 25 November; Mr. Wiarda, then Vice-President of the Court, presided as Mr. Balladore Pallieri was unable to attend. The Court had held a preparatory meeting immediately before the hearings opened. Sir Vincent Evans, the judge elected on 29 September 1980 to replace Sir Gerald Fitzmaurice, sat in the latter's stead (Rule 2 par. 3 of the Rules of Court).
There appeared before the Court:
- for the Government
Mr. J. NISET, Legal Adviser
at the Ministry of Justice, Agent,
Mr. J. M. NELISSEN GRADE, Counsel,
MR. J. PUTZEYS
MR. S. GEHLEN, lawyers
for the Ordre des médecins (Medical Association),
Mr. F. VERHAEGEN, adviser
at the Ministry of Public Health,
Mr. F. VINCKENBOSCH, secrétaire d'administration
at the Ministry of Public Health, Advisers;
- for the Commission
Mr. G. SPERDUTI,
MR. M. MELCHIOR, Delegates,
MR. J. BULTINCK, the applicant's lawyer
before the Commission, assisting the Delegates (Rule 29
par. 1, second sentence, of the Rules of Court).
The Court heard addresses by Mr. Nelissen Grade for the Government and by Mr. Sperduti, Mr. Melchior and Mr. Bultinck for the Commission, as well as their replies to questions put by the Court. It requested those appearing to produce various documents; these were supplied by the Commission on 25 November 1980 and 26 January 1981.
AS TO THE FACTS
I. THE PARTICULAR CIRCUMSTANCE OF THE CASE
A. Dr. Le Compte
8. Dr. Herman Le Compte, a Belgian national born in 1929 and resident at Knokke-Heist, is a medical practitioner.
1. The suspension ordered in 1970
9. On 28 October 1970, the West Flanders Provincial Council of the Ordre des médecins (Medical Association), which sits in Bruges, ordered that Dr. Le Compte's

right to practise medicine be suspended for six weeks. The ground was that he had given to a Belgian newspaper an interview considered by the Council to amount to publicity incompatible with the dignity and reputation of the profession. The applicant lodged an objection (opposition) against this decision, which had been given in absentia, but it was confirmed by the Provincial Council on 23 December 1970, the applicant again having failed to appear.
Dr. Le Compte thereupon referred the matter firstly to the Appeals Council of the Ordre des médecins, which, on 10 May 1971, held his appeal to be inadmissible, and secondly to the Court of Cassation, on 7 April 1972, the latter declared his appeal on a point of law inadmissible, on the ground that it had been filed without the assistance of a lawyer entitled to practise before that Court.
The order suspending Dr. Le Compte's right to practise became effective on 20 May 1972 but he did not comply with it. For this reason, on 20 February 1973, the Furnes criminal court (tribunal correctionnel) sentenced him, pursuant to Article 31 of Royal Decree no. 79 of 10 November 1967 on the Ordre des médecins, to imprisonment and a fine.
This decision was confirmed on 12 September 1973 by the Ghent Court of Appeal; a appeal by Dr. Le Compte on a point of law was dismissed by the Court of Cassation on 25 June 1974.
2. The suspension ordered in 1971
10. Concurrently with the foregoing proceedings, which are not in issue in the present case (see paragraph 36 below), further proceedings were in progress. In fact, on 30 June 1971 the Provincial Council of the Ordre des médecins had, by a decision rendered in absentia, ordered another suspension, for three months, of the applicant's right to practise: the Council stated that he had publicised in the press the above-mentioned decisions of the disciplinary organs of the Ordre and his criticisms of those organs, such conduct constituting contempt of the Ordre.
11. Dr. Le Compte had appealed to the Appeals Council of the Ordre which had confirmed this decision although without upholding the allegation of contempt. He had then referred the matter to the Court of Cassation, where he relied on the same grounds.
He contended in the first place that compulsory membership of the Ordre des médecins, without which no one may practise medicine and subjection to the jurisdiction of its disciplinary organs were contrary to the principle of freedom of association, which is guaranteed by Article 20 of the Belgian Constitution and Article 11 (art. 11) of the Convention.
The Court rejected this plea in the following terms:
"... compulsory entry on the register of an ordre which, like the Ordre des médecins, is a public-law institution having the function of ensuring the observance of the medical profession's rules of professional conduct and the maintenance of the reputation, standards of discretion, probity and dignity of its members cannot be regarded as incompatible with freedom of association, as guaranteed by Article 20 of the Constitution; ... the appellant does not allege that the rule which he is challenging goes beyond the bounds of the restrictions authorised by Article 11 par. 2 (art. 11-2) of the Convention, for example for the protection of health."
The applicant also alleged a violation of Articles 92 and 94 of the Constitution: the first provides that the courts of law shall have exclusive jurisdiction to determine disputes over civil rights and the second prohibits the establishment of extraordinary tribunals for the purpose of resolving such disputes. He pointed out that the decision complained of had nonetheless been taken by a disciplinary organ, set up by Royal Decree no. 79, and that it had given a ruling on a civil right, namely the right to practise medicine.
The Court of Cassation replied that "disciplinary proceedings and the imposition of disciplinary sanctions are, in principle, unrelated to the disputes over which exclusive jurisdiction is reserved to the courts of law by Article 92 of the Constitution". The Court added that, since the Councils of the Ordre des médecins did not have jurisdiction to determine such disputes, "they are not extraordinary tribunals whose establishment is prohibited by Article 94". Finally, the Court

observed that section 1 par. 8 (a) of the Act of 31 March 1967 (see paragraph 20 below) empowered the Crown "to reform and adapt the legislation governing the practice of the various branches of medicine" and that "the legislature was referring, inter alia, to the Act of 25 July 1938 establishing the Ordre des médecins, which Act conferred disciplinary powers on the Councils of the Ordre".
Lastly, Dr. Le Compte alleged that there had been a violation of Article 6 par. 1 (art. 6-1) of the Convention. He argued that the decision complained of had been given without any public inquiry and by a tribunal composed of medical practitioners, which could not be regarded as impartial since the kind of conduct of which he was accused might harm his colleagues.
The Court of Cassation confined itself to pointing out that Article 6 par. 1 (art. 6-1) did not apply to disciplinary proceedings.
Accordingly, by judgment of 3 May 1974, the appeal was dismissed.
12. Dr. Le Compte did not comply with the order suspending his right to practise medicine, which became final following the Court of Cassation's judgment. On that account he was sentenced by the Bruges criminal court on 16 September and 15 October 1974 to terms of imprisonment and fines. He lodged an appeal against the first decision and an objection against the second, which had been rendered in absentia.
13. Since that time, a number of further proceedings have been instituted, both disciplinary, for the publicity given by the applicant to his dispute with the Ordre, and criminal, for his refusal to comply with the measures imposed by its Councils.
One of the disciplinary proceedings resulted in Dr. Le Compte's being struck off the register of the Ordre with effect from 26 December 1975. In this connection he lodged a further application (no. 7496/76) with the Commission on 6 May 1976; that application, which the Commission declared admissible on 4 December 1979, is not relevant for the examination of the present case.
The criminal proceedings, at first instance, led to prison sentences and to fines.
B. Dr. Van Leuven and Dr. De Meyere
14. Dr. Frans Van Leuven and Dr. Marc De Meyere are medical practitioners, born in 1931 and 1940, respectively. Both of them reside at Merelbeke and are Belgian nationals.
15. On 20 January 1973, thirteen medical practitioners practising in and around Merelbeke filed a complaint to the effect that these two applicants had committed breaches of the rules of professional conduct; it was alleged, in particular, that they had systematically limited their fees to the amounts reimbursed by the Social Security, even when on emergency duty, and had distributed without charge to private houses a fortnightly magazine called Gezond in which general practitioners were held up to ridicule. On 14 March 1973, the applicants were heard by the Bureau of the Provincial Council of the Ordre. They admitted that they had limited the fees charged to their own clients but not the fees charged when they were on emergency duty. In addition, they pointed out that they were not the publishers of Gezond and they denied that they had lampooned their colleagues in its pages.
16. On 19 March 1973, another medical practitioner lodged a further complaint against the applicants; he alleged that, two days after their appearance before the Bureau of the Provincial Council, they had put up in the waiting rooms of the Merelbeke medical centre a notice informing the public of the first complaint and the reasons therefore. On 23 May 1973, the Bureau of the Provincial Council heard the applicants in connection with the second complaint. They declared that they were entitled to provide the public with information about the situation, especially as it was already a matter of common knowledge.
17. The East Flanders Provincial Council of the Ordre des médecins, which sits in Ghent, summoned Dr. Van Leuven and Dr. De Meyere to answer several allegations. On 24 October 1973, it directed that their right to practise medicine be suspended for a period of one month for having charged fees limited to the amounts reimbursed by the Social Security, for having contributed to the magazine Gezond and for having made therein public utterances judged offensive to their colleagues. In addition, Dr. Van Leuven was reprimanded for his behaviour when appearing before

the Bureau of the Provincial Council on 14 March 1973. These various decisions were based on Articles 6 par. 2 and 16 of Royal Decree no. 79.
The Provincial Council considered, on the other hand, that the posting in the waiting rooms of the medical centre of a notice judged contrary to the rules of professional conduct did not warrant a disciplinary sanction, bearing in mind that the notice had been removed following a request from the Bureau.
18. The applicants appealed to the Appeals Council.
On 24 June 1974, the latter declared the appeal admissible and upheld the Provincial Council's decision insofar as it had found established the allegations relating to the charging of fees limited to the amounts reimbursed by the Social Security and the contribution to the magazine Gezond. For the rest, the Appeals Council set aside the decision challenged and, after taking into account the complaint regarding the notice in the waiting rooms and joining it with the two other complaints, directed that the right of Dr. Van Leuven and Dr. De Meyere to practise medicine be suspended for a period of fifteen days.
19. On 25 April 1975, the Court of Cassation ruled against the applicants, who had appealed on a point of law.
The Court rejected the ground of appeal based on breach of Article 11 (art. 11) of the Convention; it considered that the functions of the Ordre des médecins "are by no means unrelated to the protection of health and that compulsory entry ... on the register of an Ordre of this kind does not exceed the restrictions on freedom of association which are necessary for the protection of health".
The Court in addition declared inadmissible, for want of legal interest, the ground of appeal to the effect that the limitation of fees to the amounts reimbursed by the Social Security was in conformity with both the law and the rules of professional conduct for medical practitioners; the Court found that the suspension had in fact also been imposed as a sanction for other disciplinary offences.
II. THE ORDRE DES MEDECINS
20. The ordre des médecins, which was established by an Act of 25 July 1938, was re-organised by Royal Decree no. 79 of 10 November 1967. This Decree was made under the Act of 31 March 1967 "investing the King with certain powers with a view to ensuring economic revival, acceleration of regional reconversion and a stable, balanced budget". The Act enabled the Crown, acting by Decrees in Council, to take "all appropriate steps ... to further the quality and ensure satisfactory provision of health care through reform and adaptation of the legislation governing the practice of the various branches of medicine" (section 1 par. 8 (a)); it specified that such Decrees could "repeal supplement, amend or replace existing legal provisions" (section 3).
21. Article 2 of Royal Decree no. 79 provides that "the Ordre des médecins shall include all physicians, surgeons and obstetricians who are permanently resident in Belgium and entered on the register of the Ordre for the Province where they have their permanent residence" and that "in order to practise medicine in Belgium, every medical practitioner" - whether Belgian or foreign - "must be entered on the register of the Ordre".
Military doctors, however, are only obliged to be entered on the register if they practise outside their military duties.
22. Alongside the Ordre des médecins, there exist in Belgium private associations formed to protect the professional interests of medical practitioners. The most important of these associations are consulted and invited to take part in collective negotiations when the Government are considering the adoption of decisions affecting those interests, to propose candidates for nomination as members of certain organs and to appoint their representatives on others, and to take various measures themselves.
A. Organs
23. The Ordre des médecins "shall enjoy civil personality in public law" (Article 1, third paragraph, of Royal Decree no. 79). It comprises three kinds of organs, namely Provincial Councils, Appeals Councils and the National Council.
1. Provincial Councils
24. The Provincial Councils (of which there are ten) consist of a number, which is

always even and is fixed by the Crown, of members and substitute members who are medical practitioners of Belgian nationality elected for six years by doctors entered on the register of the Ordre. There are also an assessor and a substitute assessor who are judges of first instance courts appointed for six years by the Crown; the assessor has a consultative status (Articles 5 and 8 par. 1 of Royal Decree no. 79).

The Council's functions are defined by Article 6 of Royal Decree no. 79 in the following terms:

"1o to keep the register of the Ordre. They may refuse or defer entry on the register if the person applying has been guilty either of an act of such seriousness as would cause the name of a member of the Ordre to be struck off the register or of serious misconduct damaging the reputation or dignity of the profession.

If the medical commission ... has decided and notified the Ordre that a medical practitioner no longer fulfils the conditions required for practising medicine or that it is necessary, for reasons of physical or mental disability, to place a restriction on the practise by him of medicine, the relevant Provincial Council shall, in the first case, remove the practitioner's name from the register and, in the second case, make the maintenance of his name thereon subject to observance of the restriction ordered.

A practitioner's name may also be removed from the register at his own request. Reasons must be given for any decision refusing or deferring entry on the register, removing a practitioner's name therefrom or making its maintenance thereon subject to restrictive conditions;

2o to ensure observance of the rules of professional conduct for medical practitioners and the upholding of the reputation, standards of discretion, probity and dignity of the members of the Ordre. They shall to this end be responsible for disciplining misconduct committed by their registered members in or in connection with the practice of the profession and serious misconduct committed outside the realm of professional activity, whenever such misconduct is liable to damage the reputation or dignity of the profession;

3o to give, of their own motion or on request, the members of the Ordre advice on matters of professional conduct ...; such advice shall be submitted to the National Council for approval ...;

4o to notify the relevant authorities of any acts involving illegal practice of medicine of which the Councils have knowledge;

5o to act, at the joint request of those concerned, as final arbitrator in disputes regarding the fees claimed by a medical practitioner from his client ...;

6o to reply to all requests for advice emanating from courts of law in connection with disputes as to fees;

7o to settle the annual subscription ... including the amount fixed by the National Council for each registered member."

25. The Provincial councils are distinct from the medical commissions which have been set up, outside the Ordre, in each Province and are composed in addition to medical and pharmaceutical practitioners of members of the paramedical professions and of officials of the Ministry of Public Health (Article 36 of Royal Decree no. 78). These commissions have two functions. The first is general and consists of "proposing to the authorities any measures designed to make a contribution to public health" and of "ensuring that practitioners ... (and) members of the paramedical professions collaborate effectively in the implementation of the measures laid down by the authorities for the purpose of preventing or combating diseases subject to quarantine or communicable diseases". The second, specific function comprises various responsibilities: "checking and ... approving practitioners' diplomas"; "withdrawing approval or making its continuance in force subject to the acceptance by the person concerned of (certain) restrictions"; "ensuring that the practice of medicine (is conducted) in accordance with the laws and regulations"; "detecting and ... reporting to the prosecuting authority cases of illegal practice"; assessing the demand for emergency services and supervising their operation; "informing interested parties, whether acting in public or private

capacity, of decisions taken" as regards a practitioner's exercise of his profession; "advising the organs of the Ordres concerned of allegations of professional misconduct against practitioners"; "supervising public sales where medicines are involved" (Article 37).

2. The Appeals Councils

26. The two Appeals Councils - one of which uses the French and the other the Dutch language - have their seat "in the Greater Brussels area". They are each composed of ten medical practitioners of Belgian nationality (five members and five substitute members) elected for six years by the Provincial Councils from among persons other than their own members, and ten Court of Appeal judges (five members and five substitute members) appointed by the Crown for the same length of time. From among these judges, the Crown designates the Chairman, who has a casting vote, and the member who is to act as rapporteur (Article 12 par. 1 and 2 of Royal Decree no. 79).

The Appeals Councils hear appeals from decisions given by the Provincial Councils on matters of registration or discipline. They deal, as the body of first and final instance, with claims concerning the regularity of elections to the Provincial Councils, the Appeals Councils and the National Council. They also decide cases on which the Provincial Councils have not given a ruling within the prescribed time-limit. Finally, they settle any dispute between Provincial Councils regarding a practitioner's place of permanent residence (Article 13).

3. The National Council

27. The National Council comprises twenty persons (ten members and ten substitute members) of Belgian nationality who are respectively elected by each of the Provincial Councils from among medical practitioners entered on its register, and twelve persons (six members and six substitute members) appointed by the Crown from among medical practitioners nominated in lists of three candidates by the medical faculties in the country. The National Council is presided over by a judge of the Court of Cassation chosen by the Crown and consists of two sections - one French-speaking, the other Dutch-speaking - each of which elects from among its number a Vice-President (Article 14).

The National Council formulates "those general principles and those rules concerning the morality, reputation, standards of discretion, probity and devotion to duty essential for practice of the profession which constitute the code of professional conduct for medical practitioners"; these principles and rules may be made compulsory by Royal Decrees in Council (a draft code failed to receive Royal approval). It keeps up to date a list of those disciplinary decisions given by the Provincial and Appeals Councils which are no longer open to appeal. It gives reasoned opinions "on general matters, on problems of principle and on the rules of professional conduct". It settles the amount of the subscription medical practitioners are asked to pay to the Ordre. More generally, it takes "all steps necessary for the achievement of the aims of the Ordre" (Article 15).

B. Procedure in disciplinary matters

28. In the procedure relating to disciplinary and registration matters, which is primarily governed by the Royal Decree of 6 February 1970 "regulating the organisation and working of the Councils of the Ordre des médecins", the contending parties are always heard. There may be three stages: a ruling at first instance by the Provincial Council, a ruling at final instance by the Appeals Council and a review by the Court of Cassation of the legality of the decisions and the observance of formal requirements.

1. Before the organs of the Ordre

29. The procedure begins before the Provincial Council which "acts either on its own initiative, or at the request of the National Council, the Minister responsible for public health, the procureur du Roi or the medical commission, or on complaint by a medical practitioner or a third party" (Article 20 par. 1, first sub-paragraph, of Royal Decree no. 79). The procedure continues before the Appeals Council if it has been seised either by the practitioner concerned, or by the Provincial Council's assessor, or by the President of the National Council acting jointly with one of the Vice-Presidents; an appeal has suspensive effect (Article

21).
30. Investigation of the matter necessarily involves the participation of a member of the judiciary: before the Provincial Council, for the purposes of the initial investigation, this will be the assessor; before the Appeals Council, for the purposes, if need be, of a supplementary investigation, it will be the Council member acting as rapporteur (see paragraphs 24 and 26 above). Furthermore, the Provincial Council member who acted as rapporteur may always be heard by the Appeals Council (Articles 7 par. 1, 12 par. 2 and 20 of Royal Decree no. 79).
31. Before the Provincial and Appeals Councils, the proceedings are conducted in private (Article 24 par. 1, sub-paragraph 3, of Royal Decree no. 79 and Article 19 of the Royal Decree of 6 February 1970). The medical practitioner concerned has the right to be informed as soon as possible of the opening of an inquiry against him (Article 24 of the Royal Decree of 6 February 1970); the procedure further provides for time-limits and formalities allowing him to have adequate time and facilities for the preparation of his defence (Articles 25 and 31); in addition, it contains guarantees concerning the use of languages (Articles 36 to 39).
The practitioner is also entitled to challenge the members of the organ hearing his case; he appears in person and may be assisted by one or more counsel who, like himself, may inspect the case-file (Articles 26, 31 and 40 to 43).
32. The Provincial and Appeals Councils are bound to deliver their ruling within a reasonable time, to preserve the secrecy of their deliberations and to give reasons for their decision. The person concerned must be promptly informed of the decision and of any appeal which may have been entered. Decisions are taken by simple majority. However, a two-thirds majority is required for striking a practitioner off the register of the Ordre or for his suspension for more than a year. The same rule applies to Appeals Council decisions ordering a sanction where the Provincial Council has imposed none or increasing the severity of the sanction imposed by the Provincial Council (Article 25 in fine of Royal Decree no. 79, Articles 4, 12, 26, 32 and 33 of the Royal Decree of 6 February 1970). The sanctions which may be imposed by the Provincial Councils - and also, if appropriate, the Appeals Councils - are "warning, censure, reprimand, suspension of the right to practise medicine for a period not exceeding two years and striking off the register of the Ordre" (Article 16 of Royal Decree no. 79).
2. Before the Court of Cassation
33. Under Article 23 of Royal Decree no. 79, "final decisions of the Provincial Councils or the Appeals Councils may be referred to the Court of Cassation either by the Minister responsible for public health, or by the President of the National Council acting jointly with one of the Vice-Presidents, or by the practitioner concerned, on the ground of contravention of the law" - the latter term being understood in a wide sense - "or of non-observance of a formal requirement which is either a matter of substance or laid down on pain of nullity". The Court will have before it the complete case-file (decisions at first instance and on appeal, memorials and final submissions of the parties, including a detailed statement of the facts); however, it cannot verify the findings of fact made by the Councils of the Ordre, unless it is alleged that there has been a breach of the rules of evidence. The Court does not have jurisdiction to rectify factual errors on the part of the Appeals Councils or to examine whether the sanction is proportionate to the fault.
An appeal to the Court of Cassation on a point of law has suspensive effect.
3. Notification of the decision
34. Decisions in a disciplinary matter which have become final are notified to the Minister of Public Health; the most important ones (striking off the register of the Ordre or suspension of the right to practise) are also notified to the medical commission and to the procureur général attached to the Court of Appeal (Article 27 of Royal Decree no. 79 and Article 35 of the Royal Decree of 6 February 1970).
PROCEEDINGS BEFORE THE COMMISSION
35. Dr. Le Compte applied to the Commission on 28 October 1974, Dr. Van Leuven and Dr. De Meyere on 21 October 1975.
All three applicants claimed that the obligation to join the Ordre des médecins and

to be under the jurisdiction of its disciplinary organs contravened Article 11 (art. 11) of the Convention, taken alone or in conjunction with Article 17 (art. 17+11). They further alleged that during the course of the disciplinary proceedings they had not had the benefit of the guarantees laid down by Article 6 (art. 6) and that the sanctions imposed on them were calculated to prevent them from disseminating information and ideas, thereby violating Article 10 (art. 10).

36. On 6 October 1976 and 10 March 1977 respectively, the Commission declared the applications admissible save on two points: it rejected for non-exhaustion of domestic remedies (Article 27 par. 3) (art. 27-3) the complaints made by all three applicants under Article 10 (art. 10) and the complaints made by Dr. Le Compte in connection with the decision given by the West Flanders Provincial Council on 28 October 1970 (see paragraph 9 above).

On 10 March 1977, the Commission ordered the joinder of the applications in pursuance of Rule 29 of its Rules of Procedure.

In its report of 14 December 1979 (Article 31 of the Convention) (art. 31), the Commission expressed the opinion:

- unanimously, that there had been no breach of Article 11 par. 1 (art. 11-1) of the Convention since the Ordre des médecins did not constitute an association;
- by eight votes to three, that Article 6 par. 1 (art. 6-1) was applicable to the proceedings which led to the disciplinary measures imposed on the applicants;
- that Article 6 par. 1 (art. 6-1) had been violated in that the applicants did not receive a "public hearing" (eight votes to three) before an "impartial tribunal" (seven votes to four).

The report contains three separate opinions, two of which are dissenting.

FINAL SUBMISSIONS MADE TO THE COURT

37. In their memorial, the Government submitted:

"[May it please the Court] to hold that the facts of the present case do not disclose any breach by the Belgian State of its obligations under the European Convention on Human Rights."

AS TO THE LAW

I. THE COMPLAINT MADE INITIALLY CONCERNING ARTICLE 10 (art. 10)

38. Initially, Dr. Le Compte, Dr. Van Leuven and Dr. De Meyere relied on Article 10 (art. 10) as well as on Articles 6 par. 1, 11 and 17 (art. 6-1, art. 11, art. 17): they maintained that the disciplinary sanctions imposed on them by the Provincial and Appeals Councils were designed to prevent them from disseminating information and ideas. In so doing, they were attacking the actual content of the decisions affecting them and not the procedure leading thereto or the obligation to join the Ordre des médecins. Accordingly, this was not merely a further legal submission or argument adduced in support of their claims under Articles 6 par. 1, 11 and 17 (art. 6-1, art. 11, art. 17), but a separate complaint. Having been rejected by the Commission for non-exhaustion of domestic remedies (see paragraph 36 above), this complaint goes beyond the ambit of the case referred to the Court (see, inter alia, the Schiesser judgment of 4 December 1979, Series A no. 34, p. 17, par. 41).

II. THE ALLEGED VIOLATION OF ARTICLE 6 par. 1 (art. 6-1)

39. The applicants claimed that they were victims of violations of Article 6 par. 1 (art. 6-1), which reads as follows:

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

40. Having regard to the submissions of those appearing before the Court, the first question for decision is whether this paragraph is applicable; the majority of the Commission affirmed that it was, but this was disputed by the Government.

A. The applicability of Article 6 par. 1 (art. 6-1)

41. Article 6 par. 1 (art. 6-1) applies only to the determination of "civil rights and obligations or of any criminal charge" (in the French text: "contestations sur [des] droits et obligations de caractère civil" and "bien-fondé de toute accusation en matière pénale"). As the Court has found on several occasions, certain cases (in the French text: "causes") are not comprised within either of these categories and thus fall outside the Article's scope (see, for example, the Lawless judgment of 1 July 1961, Series A no. 3, p. 51, par. 12; the Neumeister judgment of 27 June 1968, Series A no. 8, p. 43, par. 23; the Guzzardi judgment of 6 November 1980, Series A no. 39, p. 40, par. 108).
42. Thus, as the Government rightly emphasised with reference to the Engel judgment of 8 June 1976, disciplinary proceedings as such cannot be characterised as "criminal"; nevertheless, this may not hold good for certain specific cases (Series A no. 22, pp. 33-36, par. 80-85).
Again, disciplinary proceedings do not normally lead to a contestation (dispute) over "civil rights and obligations" (ibid., p. 37, par. 87 in fine). However, this does not mean that the position may not be different in certain circumstances. The Court has not so far had to resolve this issue expressly; in the König case, which was cited by the Commission and the Government, the applicant was complaining solely of the duration of proceedings which he had instituted before administrative courts after an administrative body had withdrawn his authorisation to run his clinic and then his authorisation to practise medicine (judgment of 28 June 1978, Series A no. 27, p. 8, par. 18, and p. 28, par. 85; see also above-mentioned Engel judgment, pp. 36-37, par. 87, first sub-paragraph).
43. In the present case, it is necessary to determine whether Article 6 par. 1 (art. 6-1) applied to the whole or part of the proceedings that took place before the Provincial and Appeals Councils, which are disciplinary organs, and subsequently before the Court of Cassation, a judicial body.
At least after the admissibility decisions of 6 October 1976 and 10 March 1977, the Government, the Commission and the applicants scarcely discussed this issue other than in the context of the words "contestations" (disputes) over "civil rights and obligations". The Court considers that it too should take this as its starting-point.
1. The existence of "contestations" (disputes) over "civil rights and obligations"
44. In certain respects, the meaning of the words "contestations" (disputes) over "civil rights and obligations" has been clarified in the Ringeisen judgment of 16 July 1971 and the König judgment of 28 June 1978.
According to the first of these judgments, the phrase in question covers "all proceedings the result of which is decisive for private rights and obligations", even if the proceedings concern a dispute between an individual and a public authority acting in its sovereign capacity; the character "of the legislation which governs how the matter is to be determined" and of the "authority" which is invested with jurisdiction in the matter are of little consequence (Series A no. 13, p. 39, par. 94).
The very notion of "civil rights and obligations" lay at the heart of the König case. The rights at issue included the right "to continue his professional activities" as a medical practitioner "for which he had obtained the necessary authorisations". In the light of the circumstances of that case, the Court classified this right as private, and hence as civil for the purposes of Article 6 par. 1 (art. 6-1) (loc. cit., pp. 29-32, par. 88-91 and 93-95).
The ramifications of this line of authority are again considerably extended as a result of the Golder judgment of 21 February 1975. The Court concluded that "Article 6 par. 1 (art. 6-1) secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal" (Series A no. 18, p. 18, par. 36). One consequence of this is that Article 6 par. 1 (art. 6-1) is not applicable solely to proceedings which are already in progress: it may also be relied on by anyone who considers that an interference with the exercise of one of his (civil) rights is unlawful and complains that he has not had the possibility of submitting that claim to a tribunal meeting the requirements of Article 6 par. 1 (art. 6-1).

45. In the present case, a preliminary point needs to be resolved: can it be said that there was a veritable "contestation" (dispute), in the sense of "two conflicting claims or applications" (oral submissions of counsel for the Government)?
Conformity with the spirit of the Convention requires that this word should not be construed too technically and that it should be given a substantive rather than a formal meaning; besides, it has no counterpart in the English text of Article 6 par. 1 (art. 6-1) ("In the determination of his civil rights and obligations"; cf. Article 49 (art. 49): "dispute").
Even if the use of the French word "contestation" implies the existence of a disagreement, the evidence clearly shows that there was one in this case. The Ordre des médecins alleged that the applicants had committed professional misconduct rendering them liable to sanctions and they denied those allegations. After the competent Provincial Council had found them guilty of that misconduct and ordered their suspension from practice – decisions that were taken in absentia in the case of Dr. Le Compte (West Flanders) and after hearing submissions on issues of fact and of law from Dr. Van Leuven and Dr. De Meyere in their cases (East Flanders) -, the applicants appealed to the Appeals Council. They all appeared before that Council where, with the assistance of lawyers, they pleaded amongst other things Articles 6 par. 1 and 11 (art. 6-1, art. 11). In most respects their appeals proved unsuccessful, whereupon they turned to the Court of Cassation relying once more, inter alia, on the Convention (see paragraphs 10-11 and 15-19 above).
46. In addition, it must be shown that the "contestation" (dispute) related to "civil rights and obligations", in other words that the "result of the proceedings" was "decisive" for such a right (see the above-mentioned Ringeisen judgment).
According to the applicants, what was at issue was their right to continue to exercise their profession; they maintained that this had been recognised to be a "civil" right in the König judgment of 28 June 1978 (loc. cit., pp. 31-32, paragraphs 91 and 93).
According to the Government, the decisions of the Provincial and Appeals Councils had but an "indirect effect" in the matter. It was argued that these organs, unlike the German administrative courts in the König case, did not review the lawfulness of an earlier measure withdrawing the right to practise but had instead to satisfy themselves that breaches of the rules of professional conduct, of a kind justifying disciplinary sanctions, had actually occurred. A "contestation" (dispute) over the right to continue to exercise the medical profession was said to have arisen, if at all, "at a later stage", that is when Dr. Le Compte, Dr. Van Leuven and Dr. De Meyere contested before the Court of Cassation the lawfulness of the measures imposed on them. The Government further submitted that this right was not "civil" and invited the Court not to follow the decision which it took in this respect in the König judgment.
47. As regards the question whether the dispute related to the above-mentioned right, the Court considers that a tenuous connection or remote consequences do not suffice for Article 6 par. 1 (art. 6-1), in either of its official versions ("contestation sur", "determination of"): civil rights and obligations must be the object - or one of the objects - of the "contestation" (dispute); the result of the proceedings must be directly decisive for such a right.
Whilst the Court agrees with the Government on this point, it does not agree that in the present case there was not this kind of direct relationship between the proceedings in question and the right to continue to exercise the medical profession. The suspensions ordered by the Provincial Council on 30 June 1971 (Dr. Le Compte) and on 24 October 1973 (Dr. Van Leuven and Dr. De Meyere) were to deprive them temporarily of their rights to practise. That right was directly in issue before the Appeals Council and the Court of Cassation, which bodies had to examine the applicants' complaints against the decisions affecting them.
48. Furthermore, it is by means of private relationships with their clients or patients that medical practitioners in private practice, such as the applicants, avail themselves of the right to continue to practise; in Belgian law, these relationships are usually contractual or quasi-contractual and, in any event, are

directly established between individuals on a personal basis and without any intervention of an essential or determining nature by a public authority. Accordingly, it is a private right that is at issue, notwithstanding the specific character of the medical profession – a profession which is exercised in the general interest - and the special duties incumbent on its members.
The Court thus concludes that Article 6 par. 1 (art. 6-1) is applicable; as in the König case (see the above-mentioned judgment, p. 32, par. 95), it does not have to determine whether the concept of "civil rights" extends beyond those rights which have a private nature.
49. Two members of the Commission, Mr. Frowein and Mr. Polak, emphasised in their dissenting opinion that the present proceedings did not concern a withdrawal of the authorisation to practise, as did the König case, but a suspension for a relatively short period - three months for Dr. Le Compte and fifteen days for Dr. Van Leuven and Dr. de Meyere. These members maintained that a suspension of this kind did not impair a civil right but was to be regarded as no more than a limitation inherent therein.
The Court is not convinced by this argument, which the Government adopted as a further alternative plea in paragraph 19 of their memorial. Unlike certain other disciplinary sanctions that might have been imposed on the applicants (warning, censure and reprimand - see paragraph 32 above), the suspension of which they complained undoubtedly constituted a direct and material interference with the right to continue to exercise the medical profession. The fact that the suspension was temporary did not prevent its impairing that right (see, mutatis mutandis, the above-mentioned Golder judgment, p. 13, par. 26); in the "contestations" (disputes) contemplated by Article 6 par. 1 (art. 6-1) the actual existence of a "civil" right may, of course, be at stake but so may the scope of such a right or the manner in which the beneficiary may avail himself thereof.
50. Since the dispute over the decisions taken against the applicants has to be regarded as a dispute relating to "civil rights and obligations", it follows that they were entitled to have their case (in French: "cause") heard by "a tribunal" satisfying the conditions laid down in Article 6 par. 1 (art. 6-1) (see the above-mentioned Golder judgment, p. 18, par. 36).
51. In fact, their case was dealt with by three bodies – the Provincial Council, the Appeals Council and the Court of Cassation. The question therefore arises whether those bodies met the requirements of Article 6 par. 1 (art. 6-1).
(a) The Court does not consider it indispensable to pursue this point as regards the Provincial Council. Whilst Article 6 par. 1 (art. 6-1) embodies the "right to a court" (see paragraph 44 above), it nevertheless does not oblige the Contracting States to submit "contestations" (disputes) over "civil rights and obligations" to a procedure conducted at each of its stages before "tribunals" meeting the Article's various requirements. Demands of flexibility and efficiency, which are fully compatible with the protection of human rights, may justify the prior intervention of administrative or professional bodies and, a fortiori, of judicial bodies which do not satisfy the said requirements in every respect; the legal tradition of many member States of the Council of Europe may be invoked in support of such a system. To this extent, the Court accepts that the arguments of the Government and of Mr. Sperduti in his separate opinion are correct.
(b) Once the Provincial Council had imposed on Dr. Le Compte, Dr. Van Leuven and Dr. De Meyere a temporary ban on the exercise of their profession, they appealed to the Appeals Council which thus had to determine the dispute over the right in question.
According to the Government, the Appeals Council nevertheless did not have to meet the conditions contained in Article 6 par. 1 (art. 6-1) since an appeal on a point of law against its decision lay to the Court of Cassation and that Court's procedure certainly did satisfy those conditions.
The Court does not agree. For civil cases, just as for criminal charges (see the Deweer judgment of 27 February 1980, Series A no. 35, pp. 24-25, par. 48), Article 6 par. 1 (art. 6-1) draws no distinction between questions of fact and questions of law. Both categories of question are equally crucial for the outcome of proceedings

relating to "civil rights and obligations". Hence, the "right to a court" (see the above-mentioned Golder judgment, p. 18, par. 36) and the right to a judicial determination of the dispute (see the above-mentioned König judgment, p. 34, par. 98 in fine) cover questions of fact just as much as questions of law. Yet the Court of Cassation does not have jurisdiction to rectify factual errors or to examine whether the sanction is proportionate to the fault (see paragraph 33 above). It follows that Article 6 par. 1 (art. 6-1) was not satisfied unless its requirements were met by the Appeals Council itself.

2. The existence of "criminal charges"

52. When deciding on the admissibility of the applications, the Commission stated that the organs of the Ordre had not been required to determine criminal charges; the same point is made at paragraph 67 of the Commission's report.

53. The Court considers it superfluous to determine this issue, which was scarcely touched on by those appearing before it: as in the König case (see the above-mentioned judgment, pp. 32-33, p par. 96), those of the Article 6 (art. 6) rules which the applicants alleged were violated apply to both civil and criminal matters.

B. Compliance with Article 6 par. 1 (art. 6-1)

54. Having regard to the conclusion at paragraph 51 above, it has to be established whether in the exercise of their jurisdiction both the Appeals Council and the Court of Cassation met the conditions laid down by Article 6 par. 1 (art. 6-1), the former because it alone fully examined measures affecting a civil right and the latter because it conducted a final review of the lawfulness of those measures. It is therefore necessary to examine whether each of them in fact constituted a "tribunal" which was "established by law", "independent" and "impartial", and afforded the applicants a "public hearing".

55. Whilst the Court of Cassation, notwithstanding the limits on its jurisdiction (see paragraphs 33 and 51 above), obviously has the characteristics of a tribunal, it has to be ascertained whether the same may be said of the Appeals Council. The fact that it exercises judicial functions (see paragraph 26 above) does not suffice. According to the Court's case-law (the above-mentioned Neumeister judgment, p. 44; the De Wilde, Ooms and Versyp judgment of 18 June 1971, Series A no. 12, p. 41, par. 78; the above-mentioned Ringeisen judgment, p. 39, par. 95), use of the term "tribunal" is warranted only for an organ which satisfies a series of further requirements - independence of the executive and of the parties to the case, duration of its members' term of office, guarantees afforded by its procedure - several of which appear in the text of Article 6 par. 1 (art. 6-1) itself. In the Court's opinion, subject to the points mentioned below, those requirements were satisfied in the present cases.

56. Since it was set up under the Constitution (Article 95), the Court of Cassation is patently established by law. As for the Appeals Council, the Court notes, as did the Commission and the Government, that, like each of the organs of the Ordre des médecins, it was established by an Act of 25 July 1938 and re-organised by Royal Decree no. 79 of 10 November 1967, made under an Act of 31 March 1967 investing the King with certain powers (see paragraph 20 above).

57. There can be no doubt as to the independence of the Court of Cassation (see the Delcourt judgment of 17 January 1970, Series A no. 11, p. 19, par. 35). The Court, in company with the Commission and the Government, is of the opinion that this also applies to the Appeals Council. It is composed of exactly the same number of medical practitioners and members of the judiciary and one of the latter, designated by the Crown, always acts as Chairman and has a casting vote. Besides, the duration of a Council member's term of office (six years) provides a further guarantee in this respect (see paragraph 26 above).

58. The Court of Cassation raises no problem on the issue of impartiality (see the above-mentioned Delcourt judgment, p. 19, par. 35).

The Appeals Council, so the Commission stated in its opinion, did not, in the particular circumstances, constitute an impartial tribunal: whilst the legal members were to be deemed neutral, the medical members had, on the other hand, to be considered as unfavourable to the applicants since they had interests very close

to those of one of the parties to the proceedings.
The Court does not agree with this argument concerning the Council's composition. The presence - already adverted to - of judges making up half the membership, including the Chairman with a casting vote (see paragraph 26 above), provides a definite assurance of impartiality and the method of election of the medical members cannot suffice to bear out a charge of bias (cf., mutatis mutandis, the above-mentioned Ringeisen judgment, p. 40, par. 97).
Again, the personal impartiality of each member must be presumed until there is proof to the contrary; in fact, as the Government pointed out, none of the applicants exercised his right of challenge (see paragraph 31 above).
59. Under the Royal Decree of 6 February 1970, all publicity before the Appeals Council is excluded in a general and absolute manner, both for the hearings and for the pronouncement of the decision (see paragraphs 31 and 34 above).
Article 6 par. 1 (art. 6-1) of the Convention does admittedly provide for exceptions to the rule requiring publicity - at least in respect of the trial of the action -, but it makes them subject to certain conditions. However, there is no evidence to suggest that any of these conditions was satisfied in the present case. The very nature both of the misconduct alleged against the applicants and of their own complaints against the Ordre was not concerned with the medical treatment of their patients. Consequently, neither matters of professional secrecy nor protection of the private life of these doctors themselves or of patients were involved; the Court does not concur with the Government's argument to the contrary. Furthermore, there is nothing to indicate that other grounds, amongst those listed in the second sentence of Article 6 par. 1 (art. 6-1), could have justified sitting in camera; the Government, moreover, did not rely on any such ground.
Dr. Le Compte, Dr. Van Leuven and Dr. de Meyere were thus entitled to have the proceedings conducted in public. Admittedly, neither the letter nor the spirit of Article 6 par. 1 (art. 6-1) would have prevented them from waiving this right of their own free will, whether expressly or tacitly (cf. the above-mentioned Deweer judgment, p. 26, par. 49); conducting disciplinary proceedings of this kind in private does not contravene the Convention, provided that the person concerned consents. In the present case, however, the applicants clearly wanted and claimed a public hearing. To refuse them such a hearing was not permissible under Article 6 par. 1 (art. 6-1), since none of the circumstances set out in its second sentence existed.
60. The public character of the proceedings before the Belgian Court of Cassation cannot suffice to remedy this defect. In fact, the Court of Cassation "shall not take cognisance of the merits of cases" (Article 95 of the Constitution and Article 23 of Royal Decree no. 79); this means that numerous issues arising in "contestations" (disputes) concerning "civil rights and obligations" fall outside its jurisdiction (see paragraphs 33 and 51 above). On the issues of this nature arising in the present case, there was neither a public hearing nor a decision pronounced publicly as required by Article 6 par. 1 (art. 6-1).
61. To sum up, the applicants' case (in French: "cause") was not heard publicly by a tribunal competent to determine all the aspects of the matter. In this respect, there was, in the particular circumstances, a breach of Article 6 par. 1 (art. 6-1).
III. THE ALLEGED VIOLATION OF ARTICLE 11 (art. 11)
62. The applicants alleged a breach of Article 11 (art. 11), which reads as follows:
"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, 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. This Article (art. 11) shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the

police or of the administration of the State."
In the applicants' submission, the obligation to join the Ordre des médecins (see paragraph 21 above) inhibited freedom of association - which implied freedom not to associate - and went beyond the limits of the restrictions permitted under paragraph 2 of Article 11 (art. 11-2); furthermore, so they contended, the very existence of the Ordre had the effect of eliminating freedom of association.
63. In its report, the Commission expressed the unanimous opinion, corresponding in substance to the Government's contention, that the Ordre, by virtue of its legal nature and specifically public function, was not an association within the meaning of Article 11 par. 1 (art. 11-1).
64. The Court notes firstly that the Belgian Ordre des médecins is a public-law institution. It was founded not by individuals but by the legislature; it remains integrated within the structures of the State and judges are appointed to most of its organs by the Crown. It pursues an aim which is in the general interest, namely the protection of health, by exercising under the relevant legislation a form of public control over the practice of medicine. Within the context of this latter function, the Ordre is required in particular to keep the register of medical practitioners. For the performance of the tasks conferred on it by the Belgian State, it is legally invested with administrative as well as rule-making and disciplinary prerogatives out of the orbit of the ordinary law (prerogatives exorbitantes du droit commun) and, in this capacity, employs processes of a public authority (see paragraphs 20-34 above).
65. Having regard to these various factors taken together, the Ordre cannot be considered as an association within the meaning of Article 11 (art. 11). However, there is a further requirement: if there is not to be a violation, the setting up of the Ordre by the Belgian State must not prevent practitioners from forming together or joining professional associations. Totalitarian régimes have resorted - and resort - to the compulsory regimentation of the professions by means of closed and exclusive organisations taking the place of the professional associations and the traditional trade unions. The authors of the Convention intended to prevent such abuses (see the Collected Edition of the "Travaux Préparatoires)), vol. II, pp. 116-118).
The Court notes that in Belgium there are several associations formed to protect the professional interests of medical practitioners and which they are completely free to join or not (see paragraph 22 above). In these circumstances, the existence of the Ordre and its attendant consequence - that is to say, the obligation on practitioners to be entered on the register of the Ordre and to be subject to the authority of its organs - clearly have neither the object nor the effect of limiting, even less suppressing, the right guaranteed by Article 11 par. 1 (art. 11-1).
66. There being no interference with the freedom safeguarded by paragraph 1 of Article 11 (art. 11-1), there is no reason to examine the case under paragraph 2 (art. 11-2) or to determine whether the Convention recognises the freedom not to associate.
IV. THE APPLICATION OF ARTICLE 50 (art. 50)
67. At the hearings, the applicants' lawyer asked the Court, in the event of its finding a breach of the Convention, to afford his clients just satisfaction under Article 50 (art. 50). He added, however, that he was "not yet in a position to establish the exact amount of any damages, in view of the possibility of compensation, if only partial, being granted under Belgian law".
The Government made no submissions regarding the application of Article 50 (art. 50).
68. Accordingly, although it was raised under Rule 47 bis of the Rules of Court, this question is not ready for decision and must be reserved; in the circumstances of the case, the Court considers that the question should be referred back to the Chamber under Rule 50 par. 4 of the Rules of Court.
FOR THESE REASONS, THE COURT
1. Holds by fifteen votes to five that Article 6 par. 1 (art. 6-1) of the Convention was applicable in the present case;

2. Holds by sixteen votes to four that there has been a breach of the said provision in that the applicants' case was not heard publicly by a tribunal competent to determine all the aspects of the matter;
3. Holds unanimously that there has been no violation of Article 6 par. 1 (art. 6-1) as regards the applicants' other complaints, and no violation of Article 11 (art. 11);
4. Holds unanimously that the question of the application of Article 50 (art. 50) is not ready for decision:
(a) accordingly, reserves the whole of the said question;
(b) refers the said question back to the Chamber under Rule 50 par. 4 of the Rules of Court.
Done in English and in French, the French text being authentic, at the Human Rights Building, Strasbourg, this twenty-third day of June, one thousand nine hundred and eighty-one.
Gérard WIARDA
President
Marc-André EISSEN
Registrar
The following separate opinions are annexed to the present judgment in accordance with Article 51 par. 2 (art. 51-2) of the Convention and Rule 50 par. 2 of the Rules of Court:
- joint concurring opinion of Mr. Cremona and Mrs. Bindschedler-Robert;
- dissenting opinion of Mr. Liesch;
- partly dissenting opinion of Mr. Matscher;
- dissenting opinion of Mr. Pinheiro Farinha;
- concurring opinion of Mr. Pettiti;
- dissenting opinion of Sir Vincent Evans;
- dissenting opinion of Mr. Thór Vilhjálmsson.
G.W.
M.-A.E.

JOINT SEPARATE OPINION OF JUDGES CREMONA AND BINDSCHEDLER-ROBERT
Like the majority of our colleagues, we have come to the conclusion that there is in this case a violation of Article 6 § 1 (art. 6-1) of the Convention, but on grounds different from those relied upon by them.
The first question which in our view falls to be considered is this: what was in essence the object of the domestic proceedings in this case? It was to establish whether the applicants had conformed to the rules of professional conduct applicable to the medical profession in their country and in general designed to maintain and uphold the probity and dignity of that profession. That in itself is not in our view the determination of a "civil right" of the applicants within the meaning of Article 6 § 1 (art. 6-1).
But of course it would be both unrealistic and, we think, also wrong to divorce this from the sanctions eventually applicable under the relevant legislation on a finding of non-compliance with those rules, and the two aspects should in fact be considered together as a whole. But even so, the fact that a possible sanction might eventually affect the applicants' continued exercise of their profession still does not in our view turn this into a determination of their "civil rights" as such, so that we find ourselves unable to agree with the conclusion of the majority to this effect and must dissociate ourselves from the arguments and considerations leading up to it or flowing therefrom in the majority judgment.
We have here clearly disciplinary proceedings (in the course of which the applicants were in effect charged, found guilty and punished) in respect of offences entailing sanctions which at their worst are undoubtedly of a certain importance. This fact already presents a certain penal connotation which calls for a careful examination as to whether we are not really here, in the circumstances of the case, in the presence of what was in effect a criminal charge within the scope of our decision in the Engel case. In this connection we would, with respect, add that this decision, undoubtedly pertinent, does not seem to have been given its due

importance in the present case. Actually when the majority consider as the object of the proceedings in this case the right to continue to exercise the medical profession, what they are in fact doing is to give preponderant weight to the sanction aspect or rather the result of it.
In the Engel case the Court said in substance that disciplinary proceedings (and those in question were undoubtedly so) in principle fall outside the scope of Article 6 § 1 (art. 6-1), but that there are situations where under cover of a charge classified by national legislation as disciplinary there is actually concealed what is in effect a criminal charge. In this connection it was said that while in a given case the nature of the offence may warrant a State employing against the person concerned disciplinary law rather than criminal law, the supervision of the Court "would generally prove to be illusory if it did not also take into consideration the degree of severity of the penalty that the person concerned risks incurring" (Series A no. 22, p. 35, § 82). In that case the Court had to consider, in the context of disciplinary law applicable to the armed forces, penalties amounting to deprivations of personal liberty and remarked that "in a society subscribing to the rule of law, there belong to the 'criminal' sphere deprivations of liberty liable to be imposed as a punishment, except those which by their nature, duration or manner of execution cannot be appreciably detrimental" (ibidem).
We are of the view that the same ought to apply to a case, like the present, where the penalty risked, even on appeal, was, amongst others, actual striking off the register, that is to say downright total withdrawal of the applicants' right to practise their profession for the future, the severity of which surely does not need to be emphasised (cf. the criminal punishment known in some legislations as interdiction from the exercise of a trade or profession, which however is usually only temporary).
In the light of the above we are of the view that we are here in the presence of what was in effect a criminal charge. Turning to the manner in which it was determined, we too find that in this case the requirements of Article 6 § 1 (art. 6-1) were not met in every respect and that a violation of the said Article 6 § 1 (art. 6-1) therefore ensues.

DISSENTING OPINION OF JUDGE LIESCH
(Translation)
To my regret, I am unable to agree with the conclusion of my learned colleagues that Article 6 § 1 (art. 6-1) of the European Convention on Human Rights is applicable in the Le Compte case.
The interpretation of the notion "contestations" (disputes) over "civil rights and obligations" has yielded a fairly abundant harvest, but the meaning and scope of the notion are still not finally settled.
The Ringeisen judgment of 16 July 1971 stated that "the French expression 'contestations sur (des) droits et obligations de caractère civil' covers all proceedings the result of which is decisive for private rights and obligations", and that "the English text, 'determination of ... civil rights and obligations', confirms this interpretation" (Series A no. 13, p. 39, § 94).
The Golder judgment of 21 February 1975 provided the Court with the occasion to hold that everyone is entitled to have any claim relating to his civil rights and obligations brought before a court or tribunal meeting the requirements of Article 6 § 1 (art. 6-1) (Series A no. 18, p. 18, § 36).
Finally, in the König judgment of 28 June 1978 the Court recognised that the right to continue to exercise the medical profession and the right to run a clinic were "civil" (Series A no. 27, pp. 31-32, §§ 91-93).
It seems to me superfluous to set out again the arguments of Judge Matscher, with which I agree entirely as far as the applicability of Article 6 § 1 (art. 6-1) is in issue.
Slightly different considerations lead me to an identical conclusion.
In the present case, the majority of the Court "considers that a tenuous connection or remote consequences do not suffice for Article 6 § 1 (art. 6-1), in either of

its official versions ('contestation sur', 'determination of'): civil rights and obligations must be the object - or one of the objects - of the 'contestation' (dispute); the result of the proceedings must be directly decisive for such a right" (§ 47).
Henceforth, therefore, all disciplinary proceedings the result of which is decisive for private rights and obligations, whether they concern medical practitioners, notaries, members of the judiciary and judicial officials, lawyers or bailiffs (huissiers), fall within the ambit of Article 6 § 1 (art. 6-1), provided that the sanction imposed affects a private right and even if the sanction takes the form of nothing more than a fine. Conversely, disciplinary penalties in the shape of a warning or a reprimand, not coupled with a financial penalty, are apparently, in the opinion of the majority of the Court, not covered by the provisions of Article 6 § 1 (art. 6-1), even though these sanctions may have an effect from a moral, and hence private, point of view.
The object of the proceedings instituted against the applicants was to ascertain whether they had committed professional misconduct which, if proved, would render them liable to sanctions; the proceedings related to professional conduct, to an attitude which the disciplinary organs considered to be open to criticism. Accordingly, the object properly so called was limited to the establishment of an alleged violation of a rule of professional conduct laid down by law.
Given that only the right at issue is relevant (see the König judgment, p. 30, § 90 in fine) and that its civil character depends on the nature and object of the action (ibid., pp. 29-30, §§ 88 to 90), there is no escape from the conclusion that the object of the disciplinary proceedings instituted against the applicants, unlike those taken against Dr. König which did directly concern private rights - the practice of medicine and the running of a private clinic -, cannot be considered to be the determination of a civil right or obligation.
In fact, the framework of any proceedings is set by the object of the litigation; it is for the court hearing the case to examine, in the light of all the aspects of this contrat judiciaire (the contractual relationship which is deemed to exist between the parties and the judge), the legal submission of the parties. Of course, this legal relationship will engender rights and obligations for the benefit of or incumbent upon the parties. However, in private matters the origin of these rights and obligations is a direct origin, it is already there in embryo, whereas in disciplinary matters the civil character of the sanction, "the result of the proceedings", will not become apparent until after a prior finding of professional misconduct, which finding is the object of the action and leads, in appropriate cases, to consequences of a private character.
In the instant case, the obligation which was at first sight and directly in issue - the applicants' right to practise medicine had not been called in question - was the obligation to observe the rules of professional conduct; these are rules of a public character and their breach had indirect and secondary repercussions solely at a later stage, when the sanction to be imposed fell to be determined.
Given that the proceedings in question did not lead directly and necessarily to the suspension complained of, they were, contrary to the Court's opinion (§ 47), not to deprive these medical practitioners of the right to practise; the outcome of the proceedings could have been quite different and could have amounted to no more than a warning. It therefore seems to me incorrect to state that the right to practise was directly in issue.
I find the analogy with the König judgment shaky. The difference lies in the fact that in the Le Compte case the suspension - of a private character - was ordered after a finding of professional misconduct on the part of those concerned, whereas in the König case the unfitness to practise medicine and to run a clinic, an actual civil right akin to the right of property, gave rise, after the necessary investigations, to a total withdrawal of authorisations.
In my opinion, it follows from the above that Article 6 § 1 (art. 6-1) was not applicable in the present case.

PARTLY DISSENTING OPINION OF JUDGE MATSCHER

(Translation)

A.

1. For reasons similar to those set out in my separate opinion annexed to the König judgment (Series A no. 27, pp. 45 et seq.), I regret that I cannot share the opinion of the majority of the Court in the present case either, insofar as it concludes that there has been a violation of Article 6 § 1 (art. 6-1) of the Convention.

It was, in fact, foreseeable that not long would elapse before the reasoning in the König judgment - which gave to the notion of "contestations" (disputes) over "civil rights and obligations" a meaning and scope which are not, as I understand it, those contemplated by Article 6 § 1 (art. 6-1) of the Convention - gave rise to ever-increasing difficulties as regards a reasonable interpretation of that provision, that is to say an interpretation which is consonant with the text and meaning of the provision in question and, at the same time, capable of serving the particular interests of persons protected by the Convention and the general interests of the Convention as regards the rights which it is intended to safeguard. A first illustration of this is furnished by the present case. One might therefore have thought that it would have provided the Court with an opportunity of reconsidering the correctness of its understanding of the notion of "contestations" (disputes) over "civil rights and obligations". Yet the Court has not confined itself to confirming, in substance, that understanding; it has even broadened it and, in so doing, has laid foundations from which even greater problems will arise.

The present judgment, like the König judgment as well for that matter, is, of course, prompted by the worthy intention of affording to the individual protection against interferences by public, professional or social authorities in an especially important area like the exercise of a profession. The fact that the Convention is defective in this respect is a point that I myself have emphasised on numerous occasions. But, according to my view of the judicial role, it is no part of the functions of an international court to give recognition to rights which the authors of the Convention did not intend to include therein. This unsatisfactory situation cannot therefore be validly rectified by means of judicial interpretation, and this is all the more so because such an interpretation threatens to upset the Convention system in one of its most sensitive sectors; rectification can be effected only by the legislature, in other words by the Contracting States, who should take steps to amend the Convention.

I see no purpose in repeating here the arguments I set out in my above-mentioned separate opinion; the gist of those arguments applies also to the present case which has many features in common with the König case, although the two are not identical.

2. It was stated in the König judgment (§§ 91-93) that the right to continue to exercise the medical profession was a civil right, within the meaning of Article 6 § 1 (art. 6-1), on account, apparently, of the fact that a medical practitioner’s activities were said to amount mainly (from the legal point of view) to the maintenance of private-law relationships with his patients. Hence, administrative proceedings designed to withdraw the authorisation to practise were said to relate to a "contestation" (dispute) over a "civil right", the result of those proceedings being decisive for the right in question.

I do not wish to bring up once more the very debatable nature of a deduction of this kind and I will confine myself to referring to the arguments on this point set out in my above-mentioned separate opinion (see p. 46).

In the König judgment (§ 95), the Court was at least able to affirm that the withdrawal of the authorisation to practise had constituted the object (or one of the objects) of the administrative proceedings instituted against the applicant. Accordingly, to the extent that the right to exercise a certain profession, even one regulated by public law, can be deemed a civil right - a view which I question -, proceedings designed to withdraw that right would themselves have a civil right as their real object.

It was quite otherwise in the present case. In fact, the applicants’ right to continue to practise medicine had been neither the object nor one of the objects of

the proceedings before the organs of the Ordre des médecins or before the Court of Cassation. The exclusive object of those proceedings was to ascertain whether the applicants had broken the medical profession's rules of professional conduct and, if so, to impose on them the corresponding sanction, in the shape of suspension of the right to practise medicine. It is that sanction alone which affected their professional situation and which thereby had an indirect effect on the private-law relationships which the applicants might have maintained with their patients. Yet, as the Court itself correctly observes, "remote consequences" which a measure taken in the course of proceedings may have on a civil right do not suffice to give those proceedings the character of (contentious) civil-law proceedings.

Since a sanction for breach of the medical profession's rules of professional conduct was involved, the case might, at the outside, be characterised as criminal. Moreover, the judgment itself seems to point to this interpretation when it speaks (in § 45) of "professional misconduct" of which the applicants were said to have been "found guilty". However, for other reasons, the judgment does not find it appropriate to follow this path (§§ 52 and 53).

3. Again, the judgment also fails to provide a sufficiently clear and precise definition of the link that must exist between a civil right and a given set of proceedings before the latter may be considered to relate to a "contestation" (dispute) over a "civil right". This is demonstrated by the vague and ambiguous language utilised by the judgment on this point: it must be shown that the contestation (dispute) "related to" civil rights and obligations, that the result of the proceedings "was decisive" for such a right (§ 46); civil rights and obligations must "be the object - or one of the objects" - of the contestation (dispute); the result of the proceedings must be "directly decisive" for such a right (§ 47); that right must be "directly in issue" (§ 47); the suspension must constitute a "direct and material interference" with the exercise of the right in question (§ 49); the contestation (dispute) must be regarded as "relating" to civil rights and obligations (§ 50); etc.

This is not the right language either for providing the Contracting States with guidance on the adaptation of their law to the requirements of the Convention institutions, or for enlightening persons protected by the Convention on an application's prospects of success. In short, it makes no contribution to legal certainty, a principle which has often been invoked, and rightly so, in the Court's judgments.

4. Can the fact that the applicants were medical practitioners in private practice really be decisive for the classification of the right in question as "private" (§ 48)? Would not the applicants have been in basically the same situation - as regards the rights for which they sought protection under the Convention - if they had been medical practitioners employed as civil servants in a public health service or medical practitioners employed in a private clinic? In fact, they did not claim to be victims of an interference with their right to establish contractual relationships with their patients; they complained exclusively of the interference with their right to exercise their profession as such. Can the position be any different as regards the right to exercise other professions, whether the individuals concerned are in private practice or not?

In addition, I also do not find it possible - short of relying on the doctrine of acquired rights, a doctrine which legal writers have for a long time recognised as not being of general application - to draw a distinction, for the purposes of the applicability of Article 6 § 1 (art. 6-1), between the grant and the withdrawal of the right to exercise a profession. The König judgment (§ 91), on which the present judgment is based, did draw such a distinction (see the rebuttal of this proposition in my separate opinion, p. 47).

It is a necessary consequence of the reasoning in the König judgment, which is now taken further by the present judgment, that the right to exercise any profession whatsoever, even to the extent that that right is regulated in its essential aspects by public law, would be a "civil right" within the meaning of Article 6 § 1 (art. 6-1). Accordingly, all proceedings, whether administrative or disciplinary, whose object or indirect effect was the grant or the withdrawal of the right to

exercise a profession would relate to a "contestation" (dispute) over a "civil right" and so would have to satisfy, at least at the final instance stage, the requirements of Article 6 § 1 (art. 6-1). The effect of this proposition, which appears to me an inescapable conclusion from the reasoning in the König judgment and the present judgment - notwithstanding all the reservations which both judgments hasten to express at various points -, is that in this respect the law of the majority of the Contracting States would be out of step with the Convention. Again, a consequence of this kind does not appear acceptable to me, nor would the Contracting States find it understandable. For me, therefore, it has rather the value of an argument ad absurdum. In these circumstances, one has to go back to the causes of this unacceptable result. As far as I am concerned, they are undoubtedly to be found in the desire to force certain legal situations into a garment - Article 6 § 1 (art. 6-1) - which was manifestly not tailored for them.

5. Of course, in order to avoid such consequences, the judgment endeavours to moderate the implications of its reasoning, in this case by envisaging the possibility of a waiver of the right to have the proceedings conducted in public. This is an expedient of very little validity: when proceedings are organised so as to take place in public, a party generally does not have the option of waiving a public hearing, since provision therefore is made not in the exclusive interests of one of the parties but in interests going beyond those of the parties, namely the interests of the administration of justice in general; when, on the other hand, a public hearing is excluded - as is rightly done for disciplinary matters - a "waiver" by a party would be quite pointless.

I would observe, in passing, that the reference (§ 59 of the present judgment) to the Deweer case (Series A no. 35, § 49) does not seem relevant to me: waiving the right to have the merits of a dispute over a substantive right determined by a tribunal meeting the requirements of Article 6 § 1 (art. 6-1) - by having recourse to an arrangement, a friendly settlement or arbitration - is quite a different matter; legal writers recognise that this right of waiver in no way implies that the parties are entitled to arrange proceedings, once they have been instituted by or against them (prohibition of agreements whereby the parties themselves fix the procedure to be followed).

For my part, I do not believe that Article 6 § 1 (art. 6-1) can be manipulated in this way. When a case is subject to that Article (art. 6-1), it must be applied in toto; a finding that it would prove impossible or unreasonable to apply it in full demonstrates, in my opinion, that it is not applicable to the given case or category of cases.

As a general point, I would like to indicate that I am strongly opposed to any attempts to apply the guarantees contained in Article 6 § 1 (art. 6-1) selectively. In addition to being incompatible with both the letter and the spirit of this provision, such a course would prove extremely dangerous for the interests of persons protected by the Convention.

6. Finally, the judgment concludes that Article 6 § 1 (art. 6-1) has been violated on a point which, in the present case, is entirely secondary and marginal, namely the fact that disciplinary proceedings were not conducted in public. It is quite true that the applicants did complain on this score as well, but their purpose was completely foreign to the purpose underlying the guarantee of a public hearing within the meaning of Article 6 § 1 (art. 6-1). And to arrive at a result of such limited scope, the judgment has had to set out propositions which the Contracting States will find perplexing and which, in any event, will open the door to ever-increasing legal uncertainty in so sensitive an area as that of the judicial guarantees contemplated by the Convention. This is why, to my regret, I cannot concur with the judgment.

B.

I agree entirely with the present judgment to the extent that it finds that there has been no interference with freedom of association within the meaning of Article 11 (art. 11) of the Convention.

DISSENTING OPINION OF JUDGE PINHEIRO FARINHA

(Translation)
To my great regret, I cannot share the opinion which my colleagues forming the majority have expressed concerning the violation of Article 6 (art. 6) of the European Convention on Human Rights.
In fact:
1. I believe that in the exercise of the medical profession the spiritual element takes precedence over the material element, with the result that what suspension of the right to practise medicine puts in issue is a public and not a civil right (this I have already said, mutatis mutandis, in my separate opinion in the König case).
2. I agree with the majority when it states in paragraph 47 of the judgment that it considers "that a tenuous connection or remote consequences do not suffice for Article 6 § 1 (art. 6-1), in either of its official versions ('contestation sur', 'determination of'): civil rights and obligations must be the object – or one of the objects – of the 'contestation' (dispute); the result of the proceedings must be directly decisive for such a right".
However, in my view the effects of the actions of Dr. Le Compte, Dr. Van Leuven and Dr. De Meyere on the private-law relationships established with their clients were not discussed before the disciplinary organs of the Ordre.
The dispute before those organs (Provincial and Appeals Councils) and then before the Court of Cassation bore solely on questions of professional conduct, and this is a matter that falls outside the ambit of the civil law.
3. I accept the following statement of the majority in paragraph 42 of the judgment: "Again, disciplinary proceedings do not normally lead to a contestation (dispute) over 'civil rights and obligations' ... However, this does not mean that the position may not be different in certain circumstances."
It follows that, as a general rule, disciplinary proceedings do not have to meet the requirements of Article 6 § 1 (art. 6-1) of the Convention.
When is Article 6 § 1 (art. 6-1) applicable to disciplinary proceedings?
In my opinion, it is not the outcome of the proceedings - the sanction which is imposed at the end of the day - which determines whether paragraph 1 of Article 6 (art. 6-1) is applicable or not.
The applicability of paragraph 1 of Article 6 (art. 6-1) depends on the object of the proceedings, of which the causa petendi is one of the elements.
Litigation gives rise to a legal situation that is dynamic (Manuel Andrade, Liçoes do Processo Civil, p. 363) or, to be more precise, a situation that is constantly evolving in that there is a gradual progression towards the final result which the litigation is calculated to achieve; it is for this reason that one cannot await the decision in order to ascertain whether it determines a "contestation" (dispute) over "civil rights and obligations".
It does not seem to me that the question whether disciplinary proceedings must or must not comply with paragraph 1 of Article 6 (art. 6-1) should depend on whether there has been imposition of a suspension from the practice of medicine - in which case the paragraph (art. 6-1) would be held to be applicable -, or imposition of other disciplinary sanctions such as a warning, a censure or a reprimand following proceedings which might depart from the rules of the Convention. Such a solution would leave matters in a state of uncertainty until the final decision had been rendered.
Here, the applicants' case concerns solely the violation of the rules of professional conduct and it follows, in my judgment, that Article 6 § 1 (art. 6-1) is inapplicable.
4. In conclusion, I consider that there has been no violation either of Article 6 § 1 (art. 6-1) or of Article 11 (art. 11) of the Convention.

SEPARATE OPINION OF JUDGE PETTITI
(Translation)
I voted with the majority of the Court on the applicability of Article 6 § 1 (art. 6-1). However, I find it necessary to indicate how I interpret this point as far as the public conduct of proceedings is concerned. The proceedings before the Court of

Cassation were conducted in public, but in the context of the hearing of an appeal on a point of law which led to no more than a review of lawfulness.
The question of the public conduct of the proceedings, within the meaning of Article 6 (art. 6), arose insofar as Belgian law does not make provision for an appeal to a tribunal competent to determine all the aspects of the matter (recours de plein contentieux, "full review").
The full review is, in fact, necessary in order to ensure that the professional body does not apply its powers for an improper purpose by, for example, imposing a sanction as a disciplinary measure for conduct which in reality amounts to the adoption of a particular viewpoint on a matter concerning the internal organisation of the profession; this kind of review is the counterpart of the jurisdictional prerogatives conferred on the professional bodies.
If the procedure before professional bodies includes at the final instance a full review, then the fact that only that stage of the proceedings is conducted in public will be enough to satisfy the rule laid down in the Article (art. 6).
One must, in fact, not overlook the specific character of disciplinary proceedings nor the fact that they form part of a tradition which has to have regard for the basic aim of professions devoted to the mission of providing public health-care or the mission of administering justice. The principle of judgment by one's peers is an inherent necessity in order to protect professional secrecy, confidential information imparted by third parties and the reputation of members of professions.
To conduct the hearings before the council of a professional organisation and before the appeal body in public, when guilt had not yet been determined at final instance, would be prejudicial to the career of the person concerned if he were finally found to be innocent. It is not a sufficient safeguard to leave to the person against whom proceedings have been instituted the choice between having them conducted in private and having them conducted in public. At the very outside, when looking for new solutions to be laid down in legislation or regulations, one might contemplate, in the absence of a full review, holding the appeal stage of the proceedings in public, but in that case with access to the hearings being restricted to members of the profession only.
However, the solution which best marries respect for the tradition of the professions and of professional tribunals with respect for the rules of a fair trial under the European Convention is, in my view, one which provides that, where there may be a full review at the conclusion of the proceedings, this final stage alone shall be conducted in public.

DISSENTING OPINION OF JUDGE SIR VINCENT EVANS

1. I agree with the judgment of the Court that there was no violation of Article 11 (art. 11) of the Convention.
2. I regret, however, that I am unable to share the opinion of the majority of the Court that there has been a violation of Article 6 § 1 (art. 6-1). In my view, Article 6 (art. 6) is not applicable in the present case, because the proceedings complained of by the applicants were not concerned with the determination of either civil rights or obligations or of a criminal charge within the meaning of that Article (art. 6).
3. The concept of "civil rights and obligations" in Article 6 (art. 6) has been taken by the Court as referring to rights of a private nature, though the Court has left open the question whether the concept within the meaning of that provision extends beyond such rights (see Ringeisen judgment of 16 July 1971, Series A no. 13, p. 39, § 94; König judgment of 28 June 1978, Series A no. 27, p. 32, § 95; and paragraphs 44 and 48 of the present judgment).
4. The interpretation of the words "civil rights and obligations" as referring to private rights and obligations is consistent with the French text of Article 6 (art. 6) ("droits et obligations de caractère civil") and is borne out by the negotiating history of the Article (art. 6) which supports the view that a restrictive meaning should be put upon these words, particularly in regard to matters within the field of public, including administrative, law. I would also endorse the proposition that it is not enough for the dispute or the proceedings to

have a tenuous connection with or remote consequences affecting civil rights or obligations, but such rights and obligations must be the object of the "contestation" (dispute) and the result of the proceedings must be directly decisive for such a right (cf. paragraph 47 of the judgment). Where I disagree with the majority of the Court is in their conclusion that the determination of a private right was the object of the dispute or proceedings in the present case.
5. The proceedings in question were conducted under Royal Decrees regulating the Ordre des médecins in Belgium and for that purpose conferring disciplinary powers on organs of the Ordre "to ensure observance of the rules of professional conduct for medical practitioners and the upholding of the reputation, standards of discretion, probity and dignity of the members of the Ordre" (paragraph 24 of the judgment). The proceedings before the Provincial and Appeals Councils and those before the Court of Cassation were therefore concerned with matters of public law. Their object was disciplinary - to ensure the observance of rules of professional conduct - and not the determination of private rights. The fact that their outcome could incidentally affect rights of a private character did not, in my opinion, suffice to bring them within the scope of Article 6 § 1 (art. 6-1).
6. The effect of the judgment is to extend the application of Article 6 § 1 (art. 6-1) to proceedings of a kind to which, in my view, it was not intended to apply and to which its requirements, particularly as regards publicity, are not always appropriate. For instance, in disciplinary cases it may not always be necessary in the public interest or desirable in the interest of the individual concerned that the decision should be made public, particularly if he has been found not to be guilty of any misconduct. The application of Article 6 § 1 (art. 6-1) to disciplinary cases may also give rise to undue difficulties as regards the composition of disciplinary organs of professional bodies and because such organs are not always "established by law".
7. It remains to consider whether the disciplinary proceedings in the present case involved the determination of any criminal charge against the applicants. In view of its finding that the proceedings in question concerned the determination of civil rights and obligations, the Court found it superfluous to decide the issue (paragraph 53 of the judgment). As noted by the Court, the Commission, when deciding on the admissibility of the applications, stated that the disciplinary organs of the Ordre had not been required to determine criminal charges (paragraph 52 of the judgment). I see no reason to disagree with the Commission. In the case of Engel and others, although the proceedings complained of were conducted under disciplinary law, the Court held that the charges against some of the applicants did come within the "criminal" sphere since their aim was the imposition of serious punishments involving deprivation of liberty (Series A no. 22, p. 36, § 85). In the present case, neither the offences charged nor the sanctions applied by the disciplinary organs were of a criminal character. It is true that Dr. Le Compte’s refusal to comply with the measures imposed by the Ordre led to his being charged subsequently with criminal offences and sentenced to terms of imprisonment and fines, but there was no complaint that the proceedings before the Belgian criminal courts failed to comply with the requirements of Article 6 (art. 6).
8. For these reasons I conclude that there was no violation of Article 6 (art. 6) of the Convention.

DISSENTING OPINION OF JUDGE THÓR VILHJÁLMSSON
I agree with the dissenting opinion of Judge Sir Vincent Evans.
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