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

COURT (CHAMBER)

CASE OF VERMEIRE v. BELGIUM

(Application no. 12849/87)

JUDGMENT

STRASBOURG

29 November 1991

In the case of Vermeire v. Belgium*,

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

Mr R. RYSSDAL, *President*,
Mr Thór VILHJÁLMSSON,
Mrs D. BINDSCHEDLER-ROBERT,
Mr B. WALSH,
Mr A. SPIELMANN,
Mr J. DE MEYER,
Mr S.K. MARTENS,
Mr A.N. LOIZOU,
Mr J.M. MORENILLA,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 27 May and 24 October 1991,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 11 July 1990, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 12849/87) against the Kingdom of Belgium lodged with the Commission under Article 25 (art. 25) by Mrs Astrid Vermeire, a Belgian national, on 1 April 1987.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Belgium recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by

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* The case is numbered 44/1990/235/301. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

** As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

*** The amendments to the Rules of Court which came into force on 1 April 1989 are applicable to this case.

the respondent State of its obligations under Articles 8 and 14 (art. 8, art. 14).

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that she wished to take part in the proceedings and designated the lawyer who would represent her (Rule 30).

3. The Chamber to be constituted included ex officio Mr J. De Meyer, the elected judge of Belgian nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 27 August 1990, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr Thór Vilhjálmsson, Mrs D. Bindschedler-Robert, Mr B. Walsh, Mr A. Spielmann, Mr S.K. Martens, Mr A.N. Loizou and Mr J.M. Morenilla (Article 43 in fine of the Convention and Rule 21 para. 4 of the Rules of Court) (art. 43).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the Belgian Government ("the Government"), the Delegate of the Commission and the lawyer for the applicant on the need for a written procedure (Rule 37 para. 1). In accordance with the order made in consequence, the Registrar received the applicant's memorial on 7 February 1991 and the Government's memorial on 18 February 1991. On 13 March the Delegate of the Commission informed the Registrar that he would submit his observations at the hearing.

5. On 9 April the Secretary to the Commission produced certain documents from the proceedings before it, as the Registrar had requested on the instructions of the President.

6. Having consulted, through the Registrar, those who would be appearing before the Court, the President had directed on 12 October 1990 that the oral proceedings should open on 23 May 1991 (Rule 38).

7. The hearing took place in public in the Human Rights Building, Strasbourg, on the appointed day. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mr J. LATHOUWERS, Legal Officer,
Ministry of Justice, *Agent*,
Mr F. HUISMAN, avocat, *Counsel*;

- for the Commission

Mr H. DANELIUS, *Delegate*;

- for the applicant

Mr K. VAN HOECKE, avocat, *Counsel*.

The Court heard addresses by Mr Huisman for the Government, Mr Danelius for the Commission and Mr Van Hoecke for the applicant, as well as their replies to its questions.

AS TO THE FACTS

I. THE PARTICULAR CIRCUMSTANCES OF THE CASE

8. Mrs Astrid Vermeire is a Belgian national resident in Brussels. She is the recognised illegitimate daughter of Jérôme Vermeire, who died unmarried in 1939. He was the son of the late Camiel Vermeire and his late wife Irma Vermeire née Van den Berghe, who also had two other children, Gérard and Robert. They died in 1951 and 1978 respectively, Gérard unmarried and without issue, Robert survived by two children of his marriage, Francine and Michel.

9. The applicant's grandparents, who had brought her up after her father's death, both died intestate, Irma Vermeire née Van den Berghe on 16 January 1975 and Camiel Vermeire on 22 July 1980. As the grandmother's heirs had remained co-owners in undivided shares up to the grandfather's death, the two estates were realised and distributed to the legitimate grandchildren Francine and Michel in a single procedure. Astrid Vermeire was excluded under the old Article 756 of the Civil Code (see paragraph 13 below).

10. On 10 June 1981 she brought an action to claim a share in the estates before the Brussels Court of First Instance. In a judgment of 3 June 1983 that court allowed her the same rights as a legitimate descendant in the estates in question.

It based its decision in particular on paragraph 59 of the judgment given by the European Court in the Marckx case on 13 June 1979 (Series A no. 31, p. 26), and took the view that "the prohibition on discrimination between legitimate and illegitimate children as regards inheritance rights [was] formulated in the judgment sufficiently clearly and precisely to allow a domestic court to apply it directly in the cases brought before it".

11. The legitimate grandchildren appealed and on 23 May 1985 the Brussels Court of Appeal set aside the judgment. It held in particular that:

> "in so far as Article 8 (art. 8) entails negative obligations prohibiting arbitrary interference by the State in the private or family life of persons residing within its territory, it lays down a rule which is sufficiently precise and comprehensive and is directly applicable, but this is not the case in so far as Article 8 (art. 8) imposes a positive obligation on the Belgian State to create a legal status in conformity with the principles stated in the said provision of the Convention; (...) given that on this point the Belgian State has various means to choose from for fulfilling this obligation, the provision is no longer sufficiently precise and comprehensive and must be interpreted as an obligation to act, responsibility for which is on the legislature, not the judiciary."

The Court of Appeal thus refused to give direct effect to the passages in the Marckx judgment relating to an illegitimate child's inheritance rights on

intestacy with respect to relatives of the parent by whom he or she has been recognised.

12. The Court of Cassation concurred substantially with the reasons for this decision, which was moreover consistent with its own case-law, and dismissed the applicant's appeal on 12 February 1987.

II. RELEVANT DOMESTIC LAW

13. The former Articles 756 and 908 of the Civil Code provided as follows:

Article 756

"Illegitimate children shall not be heirs; the law does not allow them any rights in the estates of their deceased father and mother unless they have been legally recognised. It does not allow them any rights in the estates of the relatives of their father or mother."

Article 908

"Illegitimate children may receive by disposition inter vivos or by will no more than their entitlement under the title 'Inheritance on Intestacy'."

14. These provisions were repealed by a Law of 31 March 1987, which came into force on 6 June. That Law also inserted into the Civil Code a new Article 334, according to which:

"Whatever the method used to establish affiliation, children and their descendants shall have the same rights and obligations in respect of their father and mother and their relatives by blood and by marriage, and the father and mother and their relatives by blood and by marriage shall have the same rights and obligations in respect of the children and the children's descendants."

15. Section 107 of the Law laid down the following transitional provisions:

"The provisions of this Law shall apply to children born before the date of its coming into force and still alive at that date, but shall not give rise to any rights in respect of successions taking place before that date.

However, the validity of acts and distributions done before the coming into force of this Law, under which a child born out of wedlock has been accorded rights greater than those allowed him by the provisions repealed by this Law, shall not be subject to challenge."

16. Regard should also be had to Articles 718, 724 and 883 of the Civil Code:

Article 718

"Succession shall take place on death."

Article 724

(wording in force at the time of the grandmother's death)

"The legitimate heirs shall acquire as of right the possessions, rights and legal actions of the deceased, subject to the obligation to pay all the debts of the estate. Illegitimate children, the surviving spouse and the State must obtain a court order for possession in accordance with the procedures to be specified."

(wording in force at the time of the grandfather's death)

"The legitimate heirs shall acquire as of right the possessions, rights and legal actions of the deceased, subject to the obligation to pay all the debts of the estate. Illegitimate children and the State must obtain a court order for possession in accordance with the procedures to be specified."

(wording following the Law of 31 March 1987)

"The heirs shall acquire as of right the possessions, rights and legal actions of the deceased, subject to the obligation to pay all the debts of the estate. The State must obtain a court order for possession in accordance with the procedures specified below."

Article 883

"Each co-heir shall be deemed to have succeeded solely and immediately to all the property included in his share or which has come to him on a sale of undivided joint property, and never to have had ownership of the other property in the estate."

PROCEEDINGS BEFORE THE COMMISSION

17. In her application to the Commission of 1 April 1987 (no. 12849/87), Mrs Astrid Vermeire complained that the Belgian courts had denied her the status of an heir of her grandparents. She claimed that she had thereby suffered a discriminatory interference with the exercise of her right to respect for her private and family life, which was not compatible with Article 8 in conjunction with Article 14 (art. 14+8) of the Convention.

18. On 8 November 1988 the Commission declared the application admissible. In its report of 5 April 1990 (made under Article 31) (art. 31) it expressed the opinion that the decisions in question had not violated the said Articles as regards her grandmother's estate (by seven votes to six), but that they had violated them with respect to her grandfather's estate (unanimously). The full text of the Commission's opinion and of the

dissenting opinions contained in the report is reproduced as an annex to this judgment*.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 14 IN CONJUNCTION WITH ARTICLE 8 (art. 14+8)

19. The applicant complained of having been excluded from inheritance rights in her paternal grandparents' estates. She relied on Article 8 in conjunction with Article 14 (art. 14+8) of the Convention, according to which:

Article 8 (art. 8)

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 14 (art. 14)

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

She pointed out that in the Marckx judgment of 13 June 1979 the European Court had held that the total lack of inheritance rights on intestacy by reason solely of the "illegitimate" nature of the affiliation between one of the applicants and her near relatives on her mother's side was discriminatory and hence incompatible with these Articles (Series A no. 31, p. 26, para. 59). Mrs Vermeire maintained that the domestic courts should have applied Articles 8 and 14 (art. 14, art. 8), so interpreted, directly to the estates in which she was interested; at the very least the Belgian legislature should have given the Law of 31 March 1987, amending the legislation

* Note by the Registrar: For practical reasons this annex will appear only with the printed version of the judgment (volume 214-C of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

complained of, retrospective effect as from the date of the said judgment (see paragraphs 14 and 15 above).

20. The Court stated in the Marckx case that the principle of legal certainty dispensed the Belgian State from reopening legal acts or situations that antedated the delivery of the judgment (same judgment, pp. 25-26, para. 58).

The present case concerns the estates of a grandmother who died before and a grandfather who died after that date.

A. The grandmother's estate

21. The applicant maintained that the succession to her grandmother's estate could not be regarded as having taken place before 13 June 1979. The date of death was indeed 16 January 1975, but the distribution, which alone determined the nature and extent of the heirs' claims, had not been carried out until after the said judgment, jointly with that of the grandfather's estate.

22. The succession to Irma Vermeire née Van den Berghe took place on her death and the estate devolved on her "legitimate" heirs as of that date (Articles 718 and 724 of the Civil Code, see paragraph 16 above).

The estate was undoubtedly not wound up until after 13 June 1979, but by reason of its declaratory nature the distribution had effect as from the date of death, that is to say, 16 January 1975 (Article 883 of the Civil Code, ibid).

What is in issue here is therefore a legal situation antedating the delivery of the Marckx judgment. There is no occasion to reopen it.

B. The grandfather's estate

23. With reference to her grandfather's estate, the applicant alleged that it was for the Belgian authorities to ensure that it was distributed in a manner consistent with Articles 8 and 14 (art.8, art. 14) as interpreted by the European Court in the Marckx judgment. In her opinion they could have performed their obligation either by direct application of those Articles (art. 8, art. 14) or by amending the legislation, retrospectively if need be.

24. The Government stated that they did not dispute the principles which followed from the Marckx judgment; they considered, however, that these principles compelled the Belgian State to carry out a thorough revision of the legal status of children born out of wedlock. Responsibility for this fell exclusively on the legislative power as the only body in a position to make full use of the freedom left to the State to choose the means to be utilised in its domestic legal system for fulfilling its undertaking under Article 53 (art. 53) (same judgment, pp. 25-26, para. 58). Articles 8 and 14 (art. 8, art. 14) were not sufficiently precise and comprehensive on the points at issue in

this case, and were thus not suitable for direct application by the domestic courts.

The Government further maintained that the legislature could not be criticised for any want of diligence. A first draft reform had been introduced on 15 February 1978 (see the above-mentioned Marckx judgment, Series A no. 31, p. 25, para. 57). That it had taken over nine years to complete the task could be explained both by the acknowledged complexity of the issue and by Parliament's foresight. Rather than partial, fragmentary alterations, Parliament had preferred an overall and systematic revision, extending inter alia to the delicate question of the status of children born in adultery. It had also pondered long over the temporal extent to be given to the new provisions; in the end concern for the legal certainty to be preserved in the interests of families, third parties and the State, together with the fear that a large number of lawsuits would follow, had induced it not to give the Law of 31 March 1987 any retrospective effect (see paragraph 15 above).

25. The Marckx judgment held that the total lack of inheritance rights on intestacy, based only on the "illegitimate" nature of the affiliation, was discriminatory (pp. 25 and 26, paras. 56 and 59).

This finding related to facts which were so close to those of the instant case that it applies equally to the succession in issue, which took place after its delivery.

It cannot be seen what could have prevented the Brussels Court of Appeal and the Court of Cassation from complying with the findings of the Marckx judgment, as the Court of First Instance had done. There was nothing imprecise or incomplete about the rule which prohibited discrimination against Astrid Vermeire compared with her cousins Francine and Michel, on the grounds of the "illegitimate" nature of the kinship between her and the deceased.

26. An overall revision of the legislation, with the aim of carrying out a thoroughgoing and consistent amendment of the whole of the law on affiliation and inheritance on intestacy, was not necessary at all as an essential preliminary to compliance with the Convention as interpreted by the Court in the Marckx case.

The freedom of choice allowed to a State as to the means of fulfilling its obligation under Article 53 (art. 53) cannot allow it to suspend the application of the Convention while waiting for such a reform to be completed, to the extent of compelling the Court to reject in 1991, with respect to a succession which took effect on 22 July 1980, complaints identical to those which it upheld on 13 June 1979.

27. In a case similar to the present one, from the point of view of Articles 6 and 6 bis of the Belgian Constitution according to which all Belgians are equal before the law and must be able to enjoy their rights and freedoms without discrimination, the Belgian Court of Arbitration, relying in particular on the Marckx judgment, held that "the old Article 756 of the

Civil Code, preserved in force by virtue of section 107 of the Law of 31 March 1987, breach[ed] Articles 6 and 6 bis [aforesaid] in so far as it appli[ed] to successions taking place from 13 June 1979 on" (judgment no. 18/91 of 4 July 1991, case of Verryt c. Van Calster et consorts, published in the "Moniteur belge/Belgisch Staatsblad" of 22 August 1991, pp. 18144, 18149 and 18153).

28. Similarly, it should be found that the applicant's exclusion from the estate of her grandfather Camiel Vermeire violated Article 14 in conjunction with Article 8 (art. 14+8) of the Convention.

II. APPLICATION OF ARTICLE 50 (art. 50)

29. Under Article 50 (art. 50),

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

Mrs Vermeire claimed in the first place 40,175,787 Belgian francs (BEF) as compensation, this being equivalent to her share in the two estates in question, after deducting inheritance tax and adding interest payable since the two deaths. She also claimed BEF 2,486,399 in respect of her costs and expenses before the domestic courts and the Strasbourg institutions.

30. In the Government's opinion, were the Court to find that there had been a breach of the Convention, the judgment would in itself constitute just satisfaction. The figures put forward by the applicant could in any event not be relied on, as they were based solely on the declarations of inheritance, which were unilateral and incomplete.

31. The Court agrees with the Commission that the applicant suffered pecuniary damage, the amount of which is equivalent to the share of her grandfather's estate which she would have obtained had she been his "legitimate" granddaughter. Inheritance taxes and interest due must be taken into account in calculating the compensation.

32. However, as the Government dispute the information supplied by Mrs Vermeire and as some of the costs claimed appear liable to revision on the basis of this judgment, the question of the application of Article 50 (art. 50) is not ready for decision. It should therefore be reserved.

FOR THESE REASONS, THE COURT

1. Holds by eight votes to one that the Belgian State was under no obligation to reopen the succession to the estate of Irma Vermeire née Van den Berghe;

2. Holds unanimously that the applicant's exclusion from the estate of Camiel Vermeire violated Article 14 in conjunction with Article 8 (art. 14+8) of the Convention;

3. Holds unanimously that the question of the application of Article 50 (art. 50) is not ready for decision; accordingly,
   (a) reserves it in whole;
   (b) invites the Government and the applicant to submit to it in writing within the next three months their observations on the question and in particular to communicate to it any agreement which they may reach;
   (c) reserves the subsequent procedure and delegates to the President of the Court power to fix the same if need be.

Done in French and in English, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 29 November 1991.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of the Rules of Court, the partly dissenting opinion of Mr Martens is annexed to this judgment.

R. R.
M.-A. E.

PARTLY DISSENTING OPINION OF JUDGE MARTENS

1. The combined estates of the applicant's grandparents were distributed well after the delivery of the Court's judgment in the Marckx case. Nevertheless, the division was carried out under the former Article 756 of the Belgian Civil Code; thus only the children of the applicant's uncle benefited and the applicant was excluded. She disputed the division. In accordance with the Marckx judgment she based her claim for an equal share in both estates on Article 14, taken in conjunction with Article 8 (art. 14+8) of the Convention. The Belgian courts refused, however, to annul the partition.

2. The former Article 756 denied to an "illegitimate" child any rights on intestacy in the estates of the relatives of its parents. In paragraph 59 of its Marckx judgment the Court held that this "total lack of inheritance rights" constituted a breach of Article 14, taken in conjunction with Article 8 (art. 14+8). It is true that in so holding the Court did not, strictly speaking, pronounce on whether a different share for legitimate and "illegitimate" children would be compatible with the said provisions. However, the Court's reasoning (especially in paragraphs 40 and 41 to which reference is made in paragraph 55) clearly implies that, in this province, only complete equality avoids discrimination.

Accordingly, only a distribution of the estates of the applicant's grandparents in which she shared equally with her two cousins was compatible with the requirements of Article 14, taken in conjunction with Article 8 (art. 14+8). That is why, in substance, I am in agreement with paragraph 25 of the present judgment.

3. To my regret, however, I disagree with the majority finding of a violation only as far as the estate of the grandfather is concerned. Whilst the majority holds that the Marckx doctrine only applies when "the opening of the succession" occurred after 13 June 1979, the date of the Court's judgment in that case, I find that it applies to all successions where the distribution of the estate had not yet been finalised on that date.

4. The root of this difference of opinion is to be found in the ruling the Court gave on "the temporal effect" of the Marckx judgment (para. 58) which reads:

> "... the principle of legal certainty ... dispenses the Belgian State from reopening legal acts and situations that antedate the delivery of the present judgment."

The question is how this ruling should be interpreted.

5. The majority is obviously of the opinion that it requires no further argument that the ruling refers back to national law: its finding that as to the grandmother's estate there is "a legal situation antedating the delivery of the Marckx judgment" within the meaning of the ruling (paragraph 22 of the judgment) is, without more ado, merely based on principles of Belgian law.

In its Marckx judgment the Court must, however, have been well aware:

(1) of the fact that Belgium was not the sole member State of the Council of Europe where the law on inheritance discriminated against "illegitimate" children1;

(2) of the fact that, accordingly its judgment would affect other member States as well; and

(3) of the differences which, in respect to the law of inheritance, exist between the legal systems of the member States2. Accordingly, an autonomous interpretation of the ruling seems appropriate.

6. Query, however: does not comparative law show that the "opening of the succession" or "the death of the de cujus" are often used as the decisive starting point in the context of transitional provisions in the province of succession law3 and is it not, accordingly, to be assumed that one of these moments has the same function under an autonomous interpretation of the Court's ruling? I have no doubt that this question must be answered in the negative.

7. A first and obvious point to make is that the formula used by the Court (see paragraph 4 above) is certainly not the most natural way of expressing the idea that for the temporal effect of the Marckx doctrine the date of the opening of the succession or of the decease of the de cujus should be decisive.

8. A more important consideration is, however, that the ruling by its very nature purports to limit the retroactive effect which - as the Belgian Government stressed in the Marckx case (see paragraph 58 of the Marckx judgment) - is peculiar to a judicial decision. When the Court decided that in this case such a limitation was appropriate, it did so in response to the warning by the Belgian Government that unless the Court made some proviso4:

> "the result of the judgment would be to render many ... distributions of estates irregular and open to challenge before the courts..." (ibid.)5.

The wording of the Court's ruling is conspicuously similar to that of the Government's exhortations. That makes it probable that the Court, when dispensing Belgium (and other member States where "illegitimate" children were still being similarly discriminated against)

> "from reopening legal acts or situations that antedate the delivery of the present judgment",

intended to avoid the chaotic consequences held out by the Government by limiting the retroactive effect of its judgment with the result that the new doctrine would not apply to those estates that had already been wholly distributed. The word "reopening" ("remettre en cause" in the French text) supports this interpretation of the ruling. So does the term "legal acts and situations" which suggests that in answer to the Government the Court stated that it would not be necessary to reopen distributions nor to undo

(notarial) deeds of partition and those legal situations which, in the meantime, had been based thereon (such as ownership of goods originating from the former estate and sold by a former heir who had acquired them at the distribution).

9. There is a further, and to my mind decisive point to be made in favour of the interpretation of the ruling suggested in paragraphs 3 and 8. What the Marckx judgment was about was: discrimination against "illegitimate" children and its "message" was that such discrimination was fundamentally unjust and could no longer be tolerated.

Against this background it seems obvious that the ruling should be interpreted strictly: legal certainty should of course be taken into account where possible (in the sense of the prevention of legal "disorder") but where the price for attaining this end has to be the "continuation of fundamental injustice" that continuation should be allowed only in so far as wholly unavoidable.

Continuation of injustice requires justification and that justification can only be found in the interests of third parties. The possibility of undoing even finalised distributions would affect the position of third parties who had acquired title to goods formerly belonging to the estate. It is for this reason that retroactivity had to be limited: the interests of third parties had to be safeguarded.

The interests of third parties, not those of the "legitimate" children. True, where the owner of the estate died before the delivery of the Marckx judgment, the "legitimate" children might be said to have been entitled to expect6 that they would not have to share with the "illegitimate" children. However, such an expectation was fundamentally unjust and as such deserved no protection. Accordingly, their interests could not serve as a justification for the Court’s acquiescence in the continuation of injustice.

10. All this leads to the conclusion that it stands to reason - indeed, that it is a requirement of justice - that where, after 13 June 1979, the estate of the applicant’s grandmother had not yet been distributed so that third party interests were not at stake and it was still possible to apply the new doctrine and thereby secure for the "illegitimate" child an equal share in the estate, that should have been done. Under the Court’s ruling as to the temporal effects of its Marckx judgment there is no need and no justification to differentiate in this respect between the estate of the grandmother and that of the grandfather.

NOTES

1 See, for inheritance law around 1976, the International Encyclopedia of Comparative Law, IV, chapter 6 (H.D. Krause), pp. 6-125 et seq.

2 See for example: M. Verwilghen E.A., Régimes matrimoniaux, successions et libéralités (Droit international privé et droit comparé) 1979, I, pp. 110 et seq.

3 See, for example, Article 8 of The Hague Convention on the Conflict of Laws relating to the Forms of Testamentary Dispositions:

> "The present Convention shall be applied in all cases where the testator dies after its entry into force."

In his report on the draft convention, Batiffol noted with regard to a similar provision:

> "C'est la solution la plus fréquente en droit comparé." (Actes et documents de la IXe session, III, p. 27)

In the present context, it is interesting to quote from the same report a further comment:

> "Le texte de la Commission d'Etat visait la date d'ouverture de la succession. Cette expression a été remplacée par la date du décès du testateur parce que certains pays, dont la Grande-Bretagne, ignorent la notion d'ouverture de la succession."

4 Apparently, the Government had not, however, contemplated a ruling like the one the Court gave.

5 It is worthwhile to have a look at the exact wording of the original texts. See, first the Government's memorial (Marckx case, Series B no. 29, p. 87), where the Government, having recalled that under Belgian law the relevant limitation period is thirty years, winds up its arguments by saying:

> "Tous ces partages pourraient donc être rouverts."

and by pointing out "l'insécurité et le désordre qu'entraînerait cette possibilité". See, in the same sense and almost the same words, counsel for the Government at the oral hearing, telling the Court:

> "Tous ces partages pourraient être remis en cause devant les tribunaux" (ibid., pp. 123-124).

6 In this context, I cannot refrain from noting that during the hearing in the Marckx case counsel for the applicants told the Court that since 1908 several bills had been introduced purporting to create equality between "legitimate" and "illegitimate" children but had never succeeded (see Marckx case, Series B no. 29, p. 111).