



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

SECOND SECTION

CASE OF HAAS v. THE NETHERLANDS

(Application no. 36983/97)

JUDGMENT

STRASBOURG

13 January 2004

FINAL

14/06/2004

In the case of Haas v. the Netherlands,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr J.-P. COSTA, *President*,

Mr L. LOUCAIDES,

Mr C. BÎRSAN,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs W. THOMASSEN,

Mrs A. MULARONI, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 9 December 2003,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 36983/97) against the Kingdom of the Netherlands lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Netherlands national, Mr Pieter Jelle Haas (“the applicant”), on 20 December 1995.

2. The applicant, who had been granted legal aid, was represented by Mr A.W.M. Willems, a lawyer practising in Amsterdam. The Netherlands Government (“the Government”) were represented by their Agent, Mr R.A.A. Böcker, of the Netherlands Ministry of Foreign Affairs.

3. The applicant alleged a violation of Articles 14 and 8 of the Convention taken together in that, as an unrecognised “illegitimate” child, he was not able to inherit from his father.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was initially allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court).

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section. Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

7. By a decision of 18 June 2002, the Chamber declared the application admissible.

8. The Government, but not the applicant, filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant, who was born in 1964, states that he was born from a relationship between his mother and a certain P., a civil law notary (*notaris*). Although his mother had wanted to marry, P. had not; neither had the two ever lived together. P. had not recognised (*erkenning*) the applicant. Nevertheless, he made regular payments towards the applicant's care and upbringing, gave the applicant presents for his birthday, visited him and, together with the applicant's mother, went on day trips with him. The applicant called P. "Daddy".

10. P. died on 19 August 1992 without leaving a will. His body was cremated. A nephew, K., was identified as his sole heir.

11. The applicant brought civil proceedings against K., seeking an order that K. hand over P.'s estate. The applicant argued that he had had "family life" with P. within the meaning of Article 8 of the Convention, and that the Netherlands legal provisions relating to the position of "illegitimate" and unrecognised children infringed Article 14.

12. The Arnhem Regional Court (*arrondissementsrechtbank*) rejected the applicant's claim by a judgment of 23 December 1993. It considered that the difference contained in Netherlands legislation on succession between children with and children without legally recognised family relationships (*familierechtelijke betrekkingen*) did not constitute an unjustified interference in the "family life" of "illegitimate" unrecognised children. In view of the rights and interests of third parties in relation to an inheritance, legal certainty required that only persons with a demonstrable legal family connection with the deceased be able to inherit. An "interference" with any "family life" the applicant might have had with P. was thus "in accordance with the law" and "necessary in a democratic society". In the light of these considerations, the Regional Court did not find it necessary to determine whether or not P. was the applicant's biological father.

13. The applicant appealed to the Arnhem Court of Appeal (*gerechtshof*), complaining of the Regional Court's interpretation of Articles 8 and 14 of the Convention, as well as of the fact that the Regional Court had declined to rule on the issue of paternity.

14. Four witnesses were heard before the Court of Appeal: the applicant, his mother, a friend of his mother and the person who had been the

applicant's co-guardian (*toeziend voogd*). The latter two stated that they were convinced that P. was the applicant's biological father and that he had never denied this fact to them but had, on the contrary, assured them that the applicant would be well provided for. The applicant's mother stated that she had not known any man other than P. until nine years after the applicant's birth, and that P. had referred to the applicant in public as "my son" or "my little boy". In reply to K.'s argument that he had not been aware of the applicant's existence, the applicant stated that K.'s mother, who was a sister of P., had been so aware and had met the applicant.

15. In the proceedings before the Court of Appeal the applicant also submitted a number of photographs showing himself in the company of P. and his mother.

16. On 20 June 1995 the Court of Appeal gave judgment, dismissing the appeal. While it acknowledged that a situation where a court was unable to determine a case like the present one led to an unsatisfactory outcome for the applicant, the Court of Appeal saw no possibility of departing from the recent case-law of the Supreme Court (*Hoge Raad*) to the effect that it went beyond the jurisprudential task of the judiciary to determine the consequences of the possible incompatibility of Netherlands law with Article 14 of the Convention taken in conjunction with Article 8 (judgment of 24 February 1995, reported in *Nederlandse Jurisprudentie* (Netherlands Law Reports – "NJ") 1995, no. 468).

17. The applicant lodged an appeal on points of law (*cassatie*) with the Supreme Court, which was dismissed on 17 January 1997. The Supreme Court held that, although an inability to inherit based solely on the ground of illegitimacy would be contrary to Article 8 taken in conjunction with Article 14, objective and reasonable grounds could exist to justify other kinds of restrictions on the intestate succession of "illegitimate" children. It then noted that in 1982 a law had come into force aimed at bringing the position of "illegitimate" recognised children into line with the requirements enunciated by the Court in *Marckx v. Belgium* (judgment of 13 June 1979, Series A no. 31). During the debate on the bill in Parliament, the then Minister of Justice had declared that the question of the position of "illegitimate" unrecognised children in relation to their biological fathers was a valid one, but that it fell to be dealt with in the planned reform of the law of succession.

18. Since then a number of attempts had been made to bring about this reform and, at the time of the Supreme Court's examination of the present case, a bill was before Parliament. It thus appeared that the legislature was of the view that a reform of the law of succession required the making of important political choices and that the legislative process had not yet come to an end. From this, the Supreme Court concluded in the first place that the absence in Netherlands law at the time of a rule making "illegitimate" unrecognised children the heirs of their biological fathers was not based

solely on illegitimacy but on the difficulty, inherent in a reform of legislation, of reaching a sound balance between all the interests involved in the law of succession. Secondly, it followed that the choices to be made fell beyond the scope of the judiciary's jurisprudential tasks and that it was not possible to anticipate legislative developments by judgment. The judgment of the Supreme Court was published in *NJ* 1997, no. 483, with a critical annotation by a learned author.

II. RELEVANT DOMESTIC LAW

19. Under Article 4:879 § 1 of the Civil Code (*Burgerlijk Wetboek* – “CC”), only those persons who have a legally recognised family relationship (*familierechtelijke betrekking*) with a person who has died intestate may inherit from that person.

20. Legally recognised family relationships between a father and a child exist where a child is born to a married couple or if it is born within 307 days following the dissolution of the marriage (Article 1:197 of the CC). An “illegitimate” child will have a legally recognised family relationship with its father (who does not have to be the biological father) if it has been recognised (*erkenning*) by the father, either before or after its birth (Article 1:222 of the CC).

21. Moreover, according to Article 1:215 of the CC, a legally recognised family relationship will also come into existence with the granting of letters of legitimation if it is established that the father, having died before the child was born and without having recognised it, was aware of the pregnancy and had intended to marry the mother.

22. According to the rules of intestacy, if a deceased does not leave any children with whom he has a legally recognised family relationship or a spouse, his parents and siblings (or their descendants) will inherit from him (Article 4:901 of the CC). If there are such children or a spouse, the parents and siblings are excluded from the inheritance (Articles 4:899 and 4:899a of the CC).

23. Within one year of the death of the father, a minor child with whom the late father had no legally recognised family relationship may request that an obligation be imposed on the father's heirs to make a lump sum available for his care and upbringing. In the determination of this amount, the court dealing with the request may not exceed the legally reserved portion of the estate (*wettelijk erfdeel*) to which the child would have been entitled had he had a legally recognised family relationship with his father (Article 1:406 § 5 of the CC).

24. This is an elaboration of the principle enunciated in Article 1:394 § 1 of the CC that, where there is no legally recognised family relationship between a father and his child, the former is only bound to provide maintenance (*levensonderhoud*) for the child until it has come of age. The

legally reserved portion of an estate is that part of a person's estate which will be attributed, according to the rules of intestacy, to the heirs who are direct descendants or ascendants, and which the testator is unable to dispose of by way of donation when alive, or by will.

25. On 20 March 1996 a bill was presented in Parliament aimed at amending, *inter alia*, the law of descent (*afstammingsrecht*; *Tweede Kamer* (Lower House) 1995-1996, 24 649, nos. 1-2), and on 1 April 1998 a change to the Civil Code came into force. It introduced a judicial declaration of paternity (*gerechtelijke vaststelling van vaderschap*, Article 1:207 of the CC) which may be requested by the mother or the child. A declaration of paternity has retroactive force to the time of the child's birth, but it does not adversely affect any rights acquired in good faith by third parties.

26. According to the explanatory memorandum to the bill, the possibility of having paternity determined judicially exists in all neighbouring countries. The absence of this possibility could be in conflict with Article 8 of the Convention taken in conjunction with Article 14, since it could lead to a situation where a child was deprived of a father if the latter were unwilling to recognise it. It was felt that this defect could not be remedied by the fact that a request for determination of a parental maintenance contribution could be made against the father pursuant to Article 1:394 § 1 of the CC.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 14 AND 8 OF THE CONVENTION TAKEN TOGETHER

27. The applicant complained that, unlike “legitimate” or recognised “illegitimate” children, he was unable to inherit from his father.

28. The relevant parts of Article 8 of the Convention provide:

“1. Everyone has the right to respect for his private and family life ...

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 ... for the protection of the rights and freedoms of others.”

The relevant part of Article 14 of the Convention provides:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as ... birth or other status.”

29. The Government denied that there had been a violation of these provisions.

30. The applicant submitted no argument after the application was declared admissible. In his observations submitted at the admissibility stage, he claimed, referring to the available factual evidence (see paragraph 14 above), that he was without doubt the late P.'s son.

31. The applicant further pointed to the new legislation allowing the establishment of paternity irrespective of the will of the biological father, with the attendant consequences on inheritance cases, as evidence of altered views on such matters. Taken together with the factual relationship between P., on the one hand, and the applicant and his mother, on the other, this necessarily meant that “family life” in the sense of Article 8 of the Convention existed between P. and the applicant.

32. Moreover, if the child intended to establish “family life” but the father did not, the former's intentions were more worthy of protection than the latter's. In any case, for the purpose of establishing inheritance rights, biological fatherhood ought to be considered sufficient; it ought not to be required in addition that the father and the child must also have had “effective family life”.

33. Proceeding on the basis that the case came within the ambit of Article 8 of the Convention, the applicant claimed to be the victim of a difference in treatment between “illegitimate” offspring who had been recognised by their father, and who consequently had recognised family ties with him which enabled them to inherit upon intestacy, and “illegitimate” offspring who had not been so recognised and who therefore did not have such ties.

34. The difference in treatment could not, in the applicant's submission, be justified in his case. He noted in this respect that he was competing for the inheritance not with the wife of the deceased or with a “legitimate” or recognised “illegitimate” sibling, but with a nephew of P. – a person whose relationship with the deceased was (as he presumed) more remote, not closer, than his.

35. The Government denied that a relationship amounting to “family life” existed between the applicant and the late P. First of all, they did not consider themselves to be in a position to confirm that P. was the applicant's biological father: as the domestic courts had failed to resolve this issue, it remained in dispute. DNA testing would have been possible in theory. However, P.'s body had been cremated and he had left no known offspring. Consequently, the only person whose DNA could usefully be compared with that of the applicant would be K., who was too distant a relative, if relative he was, for the outcome of such a test to be conclusive.

36. In the Government's view, other circumstances did not bear out the existence of “family life” either. P. had never lived with the applicant and his mother. Moreover, P. had never wished to establish “family life” with the applicant. This was borne out by P.'s consistent refusal until his death, twenty-eight years after the applicant was born, to recognise the applicant

as his son, whatever his reason for such refusal may have been. On this point there was a distinction between the present case and that of *Camp and Bourimi v. the Netherlands* (no. 28369/95, ECHR 2000-X).

37. The existence of “family life” between P. and the applicant sufficient to bring the case within the ambit of Article 8 could therefore not be established.

38. In any event, even assuming that the case came within the ambit of Article 8 and that consequently Article 14 could apply, there was “objective and reasonable justification” for the difference in treatment. The difference was between offspring who did not have legal family ties with their natural fathers and those who – demonstrably – did. It prevented the imposition of legal family ties on unwilling parties and served the interest of legal certainty in matters of inheritance. It could thus reasonably be considered “necessary in a democratic society” in pursuit of the “legitimate aim” of protecting “the rights of others”.

39. It made no difference, in the Government's submission, that the legislature had subsequently changed its mind and enacted legislation making possible the establishment of a man's paternity of an unrecognised “illegitimate” child against his will. This development had been occasioned by more recent technical and legal developments which were not relevant to the applicant's case.

40. The Court will examine this case, like that of *Camp and Bourimi*, cited above, under Article 14 taken in conjunction with Article 8.

41. It observes in this connection that it has consistently held that Article 14 of the Convention complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to “the enjoyment of the rights and freedoms” safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter (see, among many other authorities, *Camp and Bourimi*, cited above, and *Van Raalte v. the Netherlands*, judgment of 21 February 1997, *Reports of Judgments and Decisions* 1997-I, p. 184, § 33).

42. The Court notes at the outset that in *Camp and Bourimi*, cited above, it was not disputed that the applicant was Mr Bourimi's child. Furthermore, it was established that Mr Bourimi had wanted to recognise the applicant as his child. Moreover, legal family ties were established between the child and the deceased by means of letters of legitimation. In the instant case, the Court observes, firstly, that on the applicant's own admission he had never lived with P. Any sporadic contacts which he allegedly had with the deceased and any alleged fatherly acts on P.'s part towards him could not be construed as "family life". Secondly, it has never been the applicant's intention to have his claim to be P.'s son accepted in order to provide him with the emotional security of knowing that he is part of a family, even less so to enable him to create ties with P.'s surviving family circle or to resolve any doubts he may have about his own personal identity – he is convinced in his own mind that he is the unrecognised illegitimate son of P.

43. In the Court's opinion, the facts of the case cannot be accommodated within the ambit of Article 8 of the Convention, whether seen in terms of "family life" or "private life". The applicant is essentially complaining about the refusal of the courts to examine and recognise his claim to the estate of P. over that of K. The applicant brought a civil action against K. and sought to persuade the courts of the merits of his claim to be the unrecognised illegitimate son of the deceased. In reality, the courts were faced, not with an issue of "family life" within the meaning of Article 8 or an issue of "private life" seen in terms of personal identity, but with a question of evidence going to the issue of whether legal family ties between the applicant and the deceased should be recognised. The fact that the courts were reluctant to rule on the elements adduced by the applicant cannot be considered in the circumstances as raising an issue which falls within the scope of Article 8. In particular, an applicant cannot derive from Article 8 a right to be recognised as the heir of a deceased person for inheritance purposes. Admittedly, and as the Court held in *Marckx*, cited above, matters of intestate succession between near relatives prove to be intimately connected with family life (pp. 23-24, §§ 52-54). However, it would be stretching the notion of family life too far to hold in the circumstances of the instant case that its subject matter fell within the scope of that notion.

44. The Court would note in conclusion that the possibility of seeking a judicial declaration of paternity (Article 1:207 of the Civil Code) is now open to the applicant (see paragraph 25 above).

45. In the light of these considerations, the Court concludes that Article 8 is not applicable in the instant case. Article 14 cannot therefore be relied on.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

46. The Court, of its own motion, asked the parties to address the questions raised by the case under Article 13 of the Convention, which provides as follows:

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

47. The applicant was of the opinion that the domestic courts had denied him an effective remedy. They had not even established the facts. Thus, far from deciding the substance of his case, they had ruled that the legislature would have to step in before claims such as his could be decided on the merits. The Government, for their part, argued that there had been no violation of this provision, since the applicant had not been prevented from presenting his complaints before the domestic courts.

48. In view of its above conclusion on the applicant's complaints under Articles 8 and 14 of the Convention, the Court finds that Article 13 is also not applicable in this case.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that Articles 8, 14 and 13 of the Convention do not apply in the present case.

Done in English, and notified in writing on 13 January 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Mr Loucaides is annexed to this judgment.

J.-P.C.
S.D.

CONCURRING OPINION OF JUDGE LOUCAIDES

I agree with the majority that Articles 8, 14 and 13 of the Convention are not applicable in this case. However, my decision rests on the conclusion, on the basis of the material before the Court, that the applicant has not made his case.

The applicant argues that he is the unrecognised illegitimate child of P. and complains that he has been the victim of unjustified treatment under the Netherlands law inasmuch as, unlike “legitimate” or recognised “illegitimate” children, he was unable to inherit from his putative father, P. The complaints of the applicant are based on the presumption that he was in fact P.'s child. However, the evidence of that is in my opinion not strong enough to substantiate the applicant's allegation.

The available evidence, which the applicant relied on only after the death of P., appears to consist of the following:

(a) The statement of the applicant's mother, who went on to say that she had not known any man other than P. until nine years after the applicant's birth and that P. referred to the applicant in public as “my son” or “my little boy”.

(b) The fact, as stated, that P. made regular payments towards the applicant's care and upbringing, gave the applicant presents for his birthday, visited him and, together with the applicant's mother, went on day trips with him. The applicant called P. “Daddy”.

(c) A statement made before the Court of Appeal by a friend of the applicant's mother, and the person who has been the applicant's co-guardian, to the effect that they were convinced that P. was the applicant's biological father and that P. had never denied this fact but had, on the contrary, assured them that the applicant would be well provided for.

This evidence is not sufficient to convince me that the applicant is P.'s child. In this respect I also took into account the following facts of the case:

(a) P. never lived together with the mother of the applicant and never recognised the applicant as his child.

(b) During P's lifetime, the applicant never secured any written statement or even a clear and unambiguous admission from P. that he was in fact his father. While it may be so that P. called the applicant “my son” and “my little boy”, at this remove and taken out of context such apparent expressions of endearment cannot be persuasive.

(c) The applicant formally raised the question of his being P.'s son for the first time through civil proceedings against K., P.'s undisputed nephew, who inherited his estate. Through these proceedings he was claiming inheritance rights. However, it is not apparent that the applicant ever sought to establish family ties of any kind while P. was alive.

In the circumstances, I find that the premise on which the applicant's complaints are based, namely that he was the child of P., is not established. Therefore the application ought to have been declared inadmissible, even though this would have amounted to a reversal of the previous decision by which the application was declared admissible. This course of action is made possible by Article 35 § 4 of the Convention, which provides that “The Court shall reject any application which it considers inadmissible under this Article. It may do so *at any stage of the proceedings*” (emphasis added; see, for example, *Medeanu v. Romania* (dec.), no. 29958/96, 8 April 2003).