CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 52787/99
by Gary NEE
against Ireland

The European Court of Human Rights (Third Section), sitting on 30 January 2003 as a Chamber composed of

Mr G. RESS, *President*,
Mr L. CAFLISCH,
Mr P. KŪRIS,
Mr R. TÜRMEN,
Mr J. HEDIGAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mrs H.S. GREVE, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 22 September 1999,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Gary Nee, is an Irish national, who was born in 1974 and lives in London. He was represented before the Court by Ms E. Joyce of James B. Joyce & Co., solicitors practising in Galway, Ireland.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicant's father (PK) and mother were not married when he was born and did not subsequently marry. PK did not have any other children. PK died intestate on 21 November 1987, leaving an estate with a net value of IR£ 32,641.26.

On 24 May 1988 the applicant's solicitor wrote to the solicitor acting for PK's parents pointing out that the applicant was PK's son and noting that in May 1975 PK had paid a lump sum to the applicant's mother in response to her maintenance requests. The applicant's solicitor requested a declaration recognising PK as the applicant's father. It was accepted that under Irish law the applicant could not, as a child born outside wedlock, inherit on his father's death intestate (O'B v. S (1984 IR 316)). However, he wished to complain to this Court about that unequal treatment and, in default of receiving the requested declaration, the applicant would issue proceedings to obtain a declaration of paternity from the courts. In June 1988 the applicant's solicitor received a negative response to his request.

Letters of administration were granted to the deceased's brother on 17 May 1989.

On 26 June 1989 the applicant's solicitor wrote to the Chief State Solicitor requesting a declaration recognising that the applicant was PK's son so that the applicant could take a case to this Court about the differing treatment on intestacy of children, in default of which the applicant would issue proceedings. On 30 June 1989 the Chief State Solicitor responded that according to section 35 of the Status of Children Act 1987 ("the 1987 Act") the Attorney General, for whom the Chief State Solicitor acted, could only be introduced to the proceedings by way of court order without which the Attorney General had no role in the matter.

On 7 December 1989 the applicant issued proceedings in the Circuit Court against PK's mother and against the Attorney General. He claimed that his inability to inherit on intestacy was discriminatory and that he was desirous of bringing proceedings before the European Court of Human Rights. He sought a declaration, pursuant to section 35 of the 1987 Act or pursuant to the equitable jurisdiction of the Court, to the effect that PK was his father. In May 1990 an order was made striking out the applicant's claim

against the Attorney General and identifying the Administrator of PK's estate as the sole appropriate defendant.

By letter dated 30 May 1990 to the Chief State Solicitor, the applicant put the Attorney General on notice that the terms of any declaration of parentage would be relied on by him in an application before this Court.

On 1 May 1991 the applicant issued amended proceedings in accordance with the court order of May 1990.

The applicant was unsuccessful before the Circuit Court and appealed to the High Court. In December 1993 the High Court ordered that blood samples be taken from the applicant and from PK's mother and brother. The matter was finally heard on 30 January 1998 and, by judgment delivered on that day, the High Court declared, pursuant to section 35 of the 1987 Act and to its equitable jurisdiction, that PK was the father of the applicant. It ordered the Administrator of the estate of PK to pay to the applicant the costs of the proceedings.

B. Relevant domestic law and practice

1. Succession Act 1965 ("the 1965 Act")

At common law, an "illegitimate" child had no succession rights to either of his parents. The Legitimacy Act 1931 gave an "illegitimate" child and his mother limited reciprocal succession rights on the other's intestacy. The Succession Act 1965 did not change the position.

Section 67 of the 1987 Act provided that the estate of a deceased is to be distributed in specified portions between any surviving spouse or "issue". By judgment of 20 January 1984 (O'B v. S (1984 IR 316)), the Supreme Court found that the word "issue" did not include children who were not the issue of a lawful marriage, the latter having therefore no right to inherit on the intestacy of a natural parent. It also found that sections 67 and 69 of the 1965 Act did not infringe the principle of equality guaranteed by Article 40(1) of the Irish Constitution.

2. Status of Children Act 1987

The 1987 Act was enacted on 14 December 1987 and came into force on 14 June 1988. The purpose of this legislation was to equalise the rights of children whether born within or outside marriage and Part V of the 1987 Act makes the relevant amendment to the law relating to, *inter alia*, succession on intestacy. Upon the death intestate of a parent, a non-marital child would have the same intestacy rights as a child born to married parents. Section 29(5) of the 1987 Act makes it clear that the changes to the rights of inheritance on intestacy of children brought about by the 1987 Act

"shall not affect any rights under the intestacy of a person dying before the commencement of Part V" of the 1987 Act.

COMPLAINTS

The applicant complains under Article 8 of the Convention and Article 1 of Protocol No. 1 taken alone and in conjunction with Article 14 of the Convention about the fact that he could not inherit on intestacy his father's estate because he was born to parents who were not married.

PROCEEDINGS BEFORE THE COMMISSION AND THE COURT

By letter dated 17 July 1998 the applicant's solicitor submitted to the Commission an outline of the facts of the case, of the domestic proceedings and of his complaints under Articles 8 and 14 of the Convention. Copies of certain of the relevant documents were enclosed and the solicitor requested that the application be registered and indicated her readiness to submit any further material the Court required.

The Commission responded, by letter of 10 August 1998, enclosing an application form. It pointed out:

> "If you wish to submit your application to the Commission you should return the application form duly completed and signed as soon as possible (normally within six weeks). Failure to do so promptly might affect the date of introduction of your application and thus the six months' time-limit under [former] Article 26 of the Convention."

The applicant's solicitor's letter of 15 September 1998 acknowledged the Court's letter and pointed out that the application form would be submitted by facsimile on 21 September 1998, namely within the six-week period to which the Court's letter had referred. That letter was acknowledged by the Court in its letter of 24 September 1998.

By letter dated 22 September 1999 the applicant's solicitor submitted the application form to the Court. The application form contained 10 pages in all. Attached to it were copies of the letters of administration of 17 May 1989, the applicant's birth certificate, the Civil Bill of 1 March 1991 and a Defence filed in May 1992, three court orders and a judgment in the domestic proceedings together with a copy of the letter of 30 May 1990 to the Chief State Solicitor.

By letter dated 13 October 1999 the Court requested the applicant's solicitor to explain the delay in submitting the application form and the solicitor provided the following reasons in her letter of 3 November 1999:

(a) In the interest of the full and correct completion of the form and given the solicitor's lack of familiarity with the Convention jurisprudence, it was necessary for her and Counsel to fully research the relevant legal principles and authorities. The Court was referred to a list of documents consulted by them (the Convention, the Universal Declaration of Human Rights 1948, five judgments of this Court, the relevant pages from a textbook dealing with Articles 8 and 14 relating to "illegitimate" children and discrimination on grounds of birth and two pages of a text referring to the *Marckx* judgment (*Marckx v. Belgium*, judgment of 31 June 1979, Series A no. 31);

(b) The domestic proceedings were complex and the proper completion of the application form required a thorough review of the file and the collection of documents illustrating the history of those proceedings;

(c) It took some time to take advice from counsel (based in Dublin) and instructions from the applicant (based in London) as the solicitor was based in the west of Ireland; and

(d) The solicitor understood at all times that the important date was that of the letter of introduction of 17 July 1998.

By letter dated 22 November 1999 the Court registered the application but referred the applicant back to the contents of its letter of 10 August 1998 and, in particular, to its warning concerning any delay in submitting the application form.

THE LAW

The applicant invokes Article 8 of the Convention and Article 1 of Protocol No. 1 alone and in conjunction with Article 14 of the Convention. He complains that, as a child born out of wedlock, he had no succession rights following the death intestate of his father.

The Government consider that the application has been introduced outside of the time-limit set down by Article 35 § 1 of the Convention.

In the first place, they contend that the domestic paternity proceedings pursued by the applicant did not constitute an effective remedy to be exhausted and that the six-month time-limit began therefore to run on the date of the applicant's father's death (21 November 1987) or on the date on which letters of administration were granted in the estate (17 May 1989).

The applicant considers that those proceedings were necessary to obtain a declaration of parentage in order to make his application to this Court since the administrator of PK's estate refused to acknowledge him as PK's son. The six-month time-limit therefore ran from the date of the final decision in those proceedings (30 January 1998).

Alternatively, the Government argue that, should the Court consider that the six-month period began to run on 30 January 1998, the delay between the initial submission (17 July 1998) and the submission of the application form (22 September 1999) was such that the initial correspondence ceased to be regarded as the introduction of the application.

The applicant maintains that it would be harsh and unjust to find that there is reason to change the initial date of introduction of the application. The letter of introduction was detailed, the aim was to comprehensively complete the application form and extensive and time consuming research was carried out to this end (as detailed in his representative's letter of 3 November 1999). The impugned lapse of time was not therefore one of "deliberate inactivity", but one of effort to properly complete the application form. Furthermore, there is no identifiable prejudice to the Government by this lapse of time, the State being on notice of the applicant's intention to bring his case to this Court as early as 26 June 1989 and since the Government have already removed the impugned discrimination by the Status of Children Act 1987.

The Court does not find it necessary to decide whether the applicant's domestic paternity proceedings can be considered an effective remedy to be exhausted because, even assuming that those proceedings postponed the running of the six-month time-limit until 30 January 1998, the application is, in any event, inadmissible as having been introduced outside the time-limit set down by Article 35 § 1 of the Convention for the reasons set out below.

The Court recalls and adopts the approach of the Commission concerning former Article 26 of the Convention and delays in pursuing an application after its initial submission as set out in the Commission's decision in the case of *Kirk v. the United Kingdom* (application no. 26299/95, decision of 15 May 1996, unreported):

> "According, however, to Article [35 § 1] of the Convention, applications to the Commission must be introduced within six months of the final decision taken in respect of their subject-matter. The Commission's established practice is to consider as the date of introduction the date of the applicant's first letter indicating his intention to lodge an application and giving some indication of the nature of the complaints which he wishes to raise. However, where a substantial interval follows before the applicant submits further information regarding his proposed application, the Commission must examine the particular circumstances of the case in order to decide what date should be regarded as the date of introduction of the application, interrupting the running of time for the purpose of the six month time-limit ...
>
> The Commission considers that the purpose of the six month rule is to maintain reasonable legal certainty and ensure that cases raising issues under the Convention are examined within a reasonable time. This also facilitates the establishment of facts in a case, the passage of time rendering problematic any fair examination of the issues raised. It would therefore be contrary to the spirit and purpose of the six month rule laid down in Article [35 § 1] of the Convention to accept that by means of an initial letter an applicant could set in motion the procedure provided for in Article [34] of the

Convention only to remain inactive thereafter for an unlimited and unexplained period of time ..."

The applicant's representative submitted a detailed letter dated 17 July 1998 to the Commission outlining the applicant's complaints. Given the delay of approximately 13 months between that representative's receipt of the Commission's subsequent request of 10 August 1998 to complete the application form and the submission of that form duly completed (22 September 1999), the Court is called upon to decide on the date to be retained as the appropriate date of introduction of this application having regard to the particular circumstances of the case and the explanations for that delay provided by the applicant's representative (see also application no. 15213/89, decision of 1 July 1991, Decisions and Reports (DR) 71, p. 230).

In the first place, the Court notes that, when the initial submissions were made to the Commission in July 1998, the applicant's father's death had taken place approximately ten years previously, this lapse of time being due to the lengthy intervening domestic proceedings. If, as the applicant maintains, the *sole* purpose of those lengthy proceedings was to obtain a declaration of paternity to allow his application to this Court, then his legal representative could have been expected to exercise particular conscientiousness and diligence in the pursuit of that application before this Court once commenced.

Secondly, between 15 September 1998 and 21 September 1999 there was no contact or correspondence from the applicant's representative whatsoever and this is despite the prior warning in the Commission's letter to him (10 August 1998) about the possible consequences of delay in submitting the application form (application no. 12158/86, decision of 7 December 1987, unreported, and application no. 13370/87, decision of 4 July 1991, DR 70, p. 177).

Thirdly, an explanation for the delay was not volunteered by that representative when the application form was eventually submitted.

Fourthly, the Court does not consider convincing the reasons for the delay provided thereafter in response to the Court's request and which are contained in that representative's letter of 3 November 1999 and in the observations submitted on the applicant's behalf. It may be that this period of delay was not one of "deliberate inactivity". Nevertheless, the Court is satisfied that neither the described legal research, review of the domestic proceedings nor completion of the application form were tasks of such complexity as to justify, either alone or collectively, the delay in submitting the application form. In this respect, it notes that the substantive Convention issue was a relatively net one (unequal treatment on intestacy of children born outside wedlock) and directly relevant and published jurisprudence of the Convention organs exists on the point (including *Marckx v. Belgium,* cited above, and *Stoutt v. Ireland*, application no. 10978/84, Commission

report of 17 December 1987, DR 54, p. 43). The domestic proceedings involved only two parties, the net issue was paternity and the documentation submitted in respect of those proceedings was not voluminous. Indeed, all of these factors explain why the Court considers that it cannot reasonably be said that the subsequent completion of the application form was especially intricate or complex.

Moreover, the Court does not consider that communications between the places of work and/or residence of the legal representatives and the applicant in Ireland and the United Kingdom could plausibly be responsible for anything other than minor delays. Furthermore, given the clear warning in the Commission's letter of 10 August 1998 as to the consequences of delay in completing the application form, the applicant's representative was incorrect in assuming during that lapse of time that the date of introduction had already been definitively fixed by her letter to the Commission of 17 July 1998. Finally, and as to the alleged lack of any identifiable prejudice to the State by the lapse of time, the Court notes that notice of an intention to pursue a Convention application is quite different from the legal certainty established by the resolution of the application by way of a final decision or judgment of this Court. While the State may have expressly and non-retroactively abolished differing inheritance rights on intestacy between children born within and outside wedlock by way of the Status of Children Act 1987, the issue of the admissibility of the present application remained open during the relevant period of delay.

Accordingly, notwithstanding the applicant's representative's initial submission of 17 July 1998, the Court considers the date of introduction of the application to be 22 September 1999. Even assuming therefore that the final decision in the domestic proceedings in the present case was that of the High Court of 30 January 1998, the application must be considered to have been introduced outside the time-limit set down by Article 35 § 1 of the Convention and to be, as such, inadmissible.

For these reasons, the Court unanimously

Declares the application inadmissible.

Vincent BERGER
Registrar

Georg RESS
President