

AS TO THE ADMISSIBILITY OF

Application No. 21199/93
by Rosalie VERRYT
against Belgium

The European Commission of Human Rights (Second Chamber) sitting in private on 18 May 1994, the following members being present:

MM. S. TRECHSEL, President
H. DANELIUS
G. JÖRUNDSSON
J.-C. SOYER
H.G. SCHERMERS
MM. F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY

Mr. K. ROGGE, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 13 November 1992 by Rosalie VERRYT against Belgium and registered on 20 January 1993 under file No. 21199/93;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

FACTS

The applicant is a Belgian citizen born in 1913 and resident at Brussels, Belgium. She is retired.

Before the Commission she is represented by Mr. F. Saelens, a lawyer practising in Brussels.

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

A) Particular circumstances of the case

The applicant was born out of wedlock, on 12 September 1913, as the only child of Maria Verryt. She was not recognised by her mother under the relevant provisions of the Belgian Civil Code (CC). Therefore according to the old Article 756 CC she had no rights in the estate of her mother.

The applicant's mother, convinced that it was impossible for her unrecognised illegitimate child to inherit, sold in 1955 her house with all appurtenances, garden, orchard, pasture land and woods to her sister E. The applicant explains that in reality the sale was a sham transaction and that Maria Verryt's real intention was to ensure that E., the applicant's aunt, would bequeath the house to the applicant after her death.

In her will the applicant's mother named E. as her sole heir. On 21 July 1956 the applicant's mother died and E. took possession of all the property covered by the will.

E. died on 22 March 1983. In execution of her will, according to which her estate would be divided according to law, the inheritance was distributed to her legitimate heirs which under the old article 756 CC excluded the applicant.

In August 1983, the applicant brought an action before the Leuven Court of First Instance in order, firstly, to have the contract of sale between Maria Verryt and her sister annulled and, secondly, to claim a right to the real property sold by Maria Verryt and a share in E.'s estate.

By decision of 24 June 1986, the Leuven Court of First Instance, refused to rescind the sale since the applicant had not shown that the sale was a sham transaction, but granted the applicant the same rights as a legitimate heir in the two estates.

On 6 June 1987, the Act of 31 March 1987 which by amending the Civil Code gave illegitimate and legitimate children equal rights came into force. Its aim was to bring Belgian law in conformity with the Marckx judgment (Eur. Court H.R., judgment of 13 June 1979, Series A no. 31).

The parties appealed against the decision of the Court of First Instance and on 10 June 1988 the Court of Appeal of Brussels decided that on the basis of the old Article 756 CC, which was preserved in force in accordance with Section 107 of the Act of 31 March 1987, the applicant had no rights in either of the estates.

The applicant lodged an appeal with the Court of Cassation arguing that the Court of Appeal's judgment violated Article 14 in conjunction with Article 8 of the Convention as well as Articles 6 and 6 bis of the Belgian Constitution (non-discrimination principle).

By judgment of 2 March 1990 the Court of Cassation decided to put a preliminary question to the Court of Arbitration concerning the possible violation of Articles 6 and 6 bis of the Constitution. In its judgment of 4 July 1991 the Court of Arbitration, relying in particular on the Marckx judgment, held that the "old Article 756 of the Civil Code, preserved in force in accordance with Section 107 of the Act of 31 March 1987, breach[ed] Articles 6 and 6 bis [of the Constitution] in so far it appli[ed] to successions originating from 13 June 1979 onwards". Because of the principle of legal certainty the Court considered that the old Article 756 CC was still applicable to successions which were opened before 13 June 1979.

By judgment of 15 May 1992, the Court of Cassation set the Court of Appeal's judgment partially aside.

Referring to the Court of Arbitration's judgment the Court of Cassation annulled the Court of Appeal's judgment insofar as it denied the applicant's rights of inheritance in E.'s estate. Since E. had died in 1983 and therefore the succession had occurred after 13 June 1979 the applicant had the same rights of inheritance as a legitimate heir.

Concerning the applicant's rights in her mother's estate the Court ruled she had no rights of inheritance since her mother had died in 1956, i.e. before the Marckx judgment.

B) Relevant domestic law and practise

1. According to Articles 6 and 6 bis of the Belgian Constitution all Belgians are equal before the law and must be able to enjoy their rights and freedoms without discrimination.

2. The Belgian Civil Code, before the entry into force of the Act of 31 March 1987, provided as follows :

Article 756

"Illegitimate children shall not be heirs ; the law does not grant them any rights in the estates of their deceased father and mother unless they have been legally recognised. It does not grant 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 a will no more than their entitlement under the title 'Inheritance on Intestacy'."

These provisions were repealed by an Act of 31 March 1987, which came into force on 6 June. This Act 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."

Section 107 of the Act laid down the following transitional provisions :

"The provisions of this Act 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 opened before that date."

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

Regard should also be had to Article 718 of the Civil Code :

"Succession shall take place on death."

COMPLAINTS

The applicant complains of having been excluded from inheritance rights in her mother's estate. Recalling the case-law of the European Court of Human Rights in the Marckx judgment (Eur. Court H.R., judgment of 13 June 1979, Series A no. 31) and the Vermeire judgment (Eur. Court H.R., judgment of 29 November 1991, Series A no. 214-C) she complains of a violation of Article 14 in conjunction with Article 8 para. 1 of the Convention.

The applicant admits that in the Marckx case (aforesaid judgment, p. 25-26, para. 58), the Court stated that the principle of legal certainty dispensed the Belgian State from reopening legal acts or situations that antedated the delivery of the judgment. However, the applicant is of the opinion that the limitation of retroactivity of the Marckx judgment only concerns definitively executed and distributed successions or legal situations where third parties have obtained definitive rights to the property of the estate. She notes there is no ground to exclude illegitimate children from inheritances which were

still in the process of execution and definitive distribution after 13 June 1979. In such a case there is no risk for legal uncertainty.

THE LAW

Having been excluded from inheritance rights in her mother's estate because of her illegitimate affiliation the applicant complains of being a victim of discrimination in the enjoyment of her right to respect for her family life. She invokes Article 14 in conjunction with Article 8 para. 1 (Art. 14+8-1) of the Convention.

Article 8 para. 1 (Art. 8-1) of the Convention reads as follows :

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

Article 14 (Art. 14) of the Convention reads :

"The enjoyment of the rights and freedoms set forth in this 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."

The Commission recalls that in the Marckx case (Eur. Court H.R., judgment 13 June 1979, Series A no. 31, p. 26, para. 59) the European Court of Human Rights considered that the total lack of inheritance rights on intestacy by reason solely of the illegitimate nature of the affiliation between a person and her near relatives on her mother's side was discriminatory and hence incompatible with Article 14 in conjunction with Article 8 (Art. 14+8) of the Convention.

The European Court further ruled that in the interests of legal certainty the Belgian State was dispensed from reopening legal acts or situations that antedated the delivery of the judgment (aforesaid Marckx judgment, p. 26, para. 58).

The Commission also recalls that in the Vermeire case (Eur. Court H.R, judgment 29 November 1991, Series A No. 214-C , p. 81, para. 21-22) having regard to the fact that according to Belgian law succession takes place after the death of a person and the heirs have their rights to the estate as of the date of death, the European Court decided that a succession shall be considered to have taken place before the Marckx judgment where the death occurred before that date, even if the distribution of the property was effected after the said judgment. In such a case there is a legal situation antedating the Marckx judgment and there is no requirement that it be reopened.

The Commission notes that the applicant's mother died on 21 July 1956 and that on that date E. took possession of all the property covered by the applicant's mother's will.

Therefore, the Commission considers that there was in the present case a legal situation antedating the judgment which, for reasons of legal certainty, the Belgian State is not required to alter in retrospect.

It follows that the application must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber

President of the Second Chamber

(K. ROGGE)

(S. TRECHSEL)