

Press release issued by the Registrar

**CHAMBER JUDGMENT  
MERGER AND CROS v. FRANCE**

The European Court of Human Rights has today notified in writing a judgment<sup>1</sup> in the case of *Merger and Cros v. France* (application no. 68864/01).

The Court held unanimously that there had been

- a **violation of Article 14** (prohibition of discrimination) of the European Convention on Human Rights **taken together with Article 1 of Protocol No. 1** (protection of property) to the Convention.
- a **violation of Articles 14 and 8** (right to respect for private and family life), taken together.

Under Article 41 (just satisfaction), the Court awarded Ms Merger 612,145 euros (EUR) and Mrs Cros EUR 278,634 for pecuniary damage. It also awarded them EUR 3,000 each for non-pecuniary damage. Lastly, it awarded Ms Merger EUR 34,440 and Mrs Cros 17,600 for costs and expenses.

(The judgment is available only in French.)

**1. Principal facts**

The applicants, Hermance Merger and her mother, Clémentine Cros, are French nationals who were born in 1968 and 1936 respectively and live in Paris.

The first applicant was born in 1968 of a relationship between her mother and a Mr Merger, a married man who already had four children. Her parents had been living together since 1965.

In 1980 Mr Merger drew up a document dividing his movable property between his five children. Subsequently, in 1984 and 1985 he made two wills in which he bequeathed to the first applicant the remainder of his assets which he was legally entitled to dispose of (the disposable portion of his estate) and, among other things, expressed his intention that she should receive an allowance to pay her tuition fees.

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<sup>1</sup> Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

Mr Merger died in 1986, leaving as his heirs his wife, their four legitimate children and the first applicant, born out of wedlock from his adulterous relationship with the second applicant. The deceased's four legitimate children and their mother brought proceedings against the applicants, seeking, in particular, an order setting aside the bequest to the first applicant and the gifts made to the second applicant.

In a judgment of 6 November 1992 the Paris *tribunal de grande instance* found in favour of the complainants. It set aside the gifts made to the second applicant, deeming them to have been made to her daughter through an intermediary, set aside the bequest to the first applicant, declared the division of the estate null and void and added, as a secondary point, that the first applicant was entitled to only 10% of the estate. The Dijon Court of Appeal upheld that judgment with regard in particular to the refusal to grant the first applicant identical inheritance rights to the deceased's four legitimate children, and declared inadmissible the request for maintenance payments.

In February 1999 the deceased's estate was liquidated. Under the terms of the deed of division, the first applicant was required to pay a sum equivalent to EUR 236,187 to compensate for the unequal value of the different parts of the estate. As she had no property of her own, her mother sold her home in order to pay the balance required. In a judgment of 3 May 2000 the Court of Cassation dismissed an appeal on points of law by the applicants, and the balance was duly paid to the other heirs.

## **2. Procedure and composition of the Court**

The application was lodged on 3 November 2000 and declared admissible on 11 March 2004.

Judgment was given by a Chamber of 7 judges, composed as follows:

Christos **Rozakis** (Greek), *President*,  
Jean-Paul **Costa** (French),  
Françoise **Tulkens** (Belgian),  
Elisabeth **Steiner** (Austrian),  
Khanlar **Hajiyev** (Azerbaijani),  
Dean **Spielmann** (Luxemburger),  
Sverre Erik **Jebens** (Norwegian), *judges*,

and also Søren **Nielsen**, *Section Registrar*.

## **3. Summary of the judgment<sup>1</sup>**

### **Complaints**

The applicants complained of the restrictions on the first applicant's inheritance rights and on their capacity to receive lifetime or testamentary gifts from her father. They submitted that they had been discriminated against on account of the first applicant's status as an "adulterine" child. They relied on Article 1 of Protocol No. 1 taken together with Article 14 of the Convention, and on Articles 8 and 14 taken together.

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<sup>1</sup> This summary by the Registry does not bind the Court.

## **Decision of the Court**

### Article 1 of Protocol No. 1 taken together with Article 14

#### *As regards the first applicant's inheritance rights*

The Court noted that the first applicant had been penalised in the division of the assets of the estate on account of her status as an adulterine child. It reiterated that in the division of an estate, no grounds could justify discrimination based on birth out of wedlock. The Court accordingly held that there had been a violation of Article 1 of Protocol No. 1 taken together with Article 14.

#### *As regards the capacity of both applicants to receive gifts*

The Court reiterated that Article 1 of Protocol No. 1 enshrined the right of everyone to the peaceful enjoyment of "his" possessions but applied only to existing possessions and did not guarantee the right to acquire possessions whether by inheritance or through voluntary dispositions. Accordingly, this provision was not applicable and the Court held that there had been no violation of Article 1 of Protocol No. 1 taken together with Article 14 in that respect.

### Article 8 taken together with Article 14

#### *As regards the first applicant's inheritance rights*

Having regard to the conclusion it had reached under Article 1 of Protocol No. 1 taken together with Article 14, and to the fact that the parties' submissions were the same as those examined on that point, the Court considered that it was not necessary to examine this complaint under Article 8 taken together with Article 14.

#### *As regards the capacity of both applicants to receive gifts*

The first applicant had been born in 1968, and her parents had been living together since 1965. At the time of her birth she and her parents had manifestly formed a "family" within the meaning of Article 8 of the Convention. The Court reiterated that matters of inheritance and of disposition between near relatives were intimately connected with family life. Family life did not include only social, moral or cultural relations, but also interests of a material kind, as was shown by, among other things, the obligations in respect of maintenance and the position occupied in the domestic legal systems of the majority of the Contracting States by the institution of the reserved portion of an estate.

While inheritance rights were not normally exercised until the estate-owner's death, that is at a time when family life underwent a change or even came to an end, issues concerning such rights could arise before the death: the distribution of the estate, which could be settled by the making of a will or of a gift on account of a future inheritance, as was often the case in practice, was a feature of family life that could not be disregarded.

In the present case, on account of her status as an adulterine child, the first applicant had had no legal capacity to receive lifetime or testamentary gifts from her father to the value of more than half the share of the estate to which she would have been entitled if she had been a legitimate child. Similarly, on account of this lack of legal capacity, the gifts which her father had made to her mother were deemed by law to have been made to the first applicant herself through an intermediary. Consequently, on her father's death all those gifts had been notionally considered part of his overall estate and, following the relevant calculations, the

first applicant had had to pay the other heirs – her father’s legitimate children – a balancing adjustment, so that she had only actually received half of her share of the estate.

As in relation to inheritance rights, the Court could find no ground in the present case to justify such discrimination based on birth out of wedlock and accordingly held that there had been a violation of Articles 8 and 14 taken together in respect of both applicants.

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The Court’s judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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*The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. Since 1 November 1998 it has sat as a full-time Court composed of an equal number of judges to that of the States party to the Convention. The Court examines the admissibility and merits of applications submitted to it. It sits in Chambers of 7 judges or, in exceptional cases, as a Grand Chamber of 17 judges. The Committee of Ministers of the Council of Europe supervises the execution of the Court’s judgments. More detailed information about the Court and its activities can be found on its Internet site.*