



## Difference of treatment between illegitimate child and legitimate children was not discriminatory

In today's Chamber judgment in the case of [Fabris v. France](#) (application no. 16574/08), which is not final<sup>1</sup>, the European Court of Human Rights held, by a majority, that there had been:

**No 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).**

The case concerned the inheritance rights of the applicant, born from an adulterous relationship, whose maternal affiliation was judicially established when he was 40 years old.

### Principal facts

The applicant, Henry Fabris, is a French national who was born in 1943 and lives in Orleans (France). He was born from an adulterous relationship between his father and a married woman who already had two children born of her marriage.

In 1970 Mr Fabris's mother and her husband, Mr M., distributed their property *inter vivos* between their two legitimate children whilst retaining a life interest for themselves until their death ("life tenancy").

Mr M. died in 1981 and Mr Fabris's mother on 28 July 1994.

On 24 November 1983 the Montpellier *tribunal de grande instance* declared Mr Fabris to be the illegitimate child of Mrs M.

In 1998 Mr Fabris brought an action for abatement in the Béziers *tribunal de grande instance* against the two children of his mother's marriage so that he could claim his share of his mother's estate. At the time, the Law of 3 January 1972 provided that children born of an adulterous relationship could lay claim to half the share of a legitimate child in their father or mother's estate.

After the Court had ruled against France in 2000 in the case of *Mazurek v. France*<sup>2</sup> (discriminatory infringement of the right of property of a child born of an adulterous relationship whose share in the estate had been reduced in accordance with the Law of 3 January 1972), France passed a Law of 3 December 2001 amending its legislation and

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<sup>1</sup> Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

<sup>2</sup> *Mazurek v. France* (no. 34406/97), 1 February 2000.

granting children born of an adulterous relationship identical inheritance rights to legitimate children.

In a judgment of 6 September 2004 the Béziers *tribunal de grande instance* declared that Mr Fabris could validly seek an abatement in respect of the distribution of Mr and Mrs M.'s estate in 1970, and upheld his claim on the merits.

The children born of Mrs M.'s marriage appealed. In a judgment of 14 February 2006, the Montpellier Court of Appeal set aside the judgment of the Béziers Court. It based its decision particularly on section 14 of the Law of 1972, which provided that *inter vivos* donations made prior to that Law could not be challenged. In the court's view, that provision applied in Mr Fabris's case because his mother's estate had been distributed between the presumptive heirs in 1970. The Court of Appeal found that the rule was objectively and reasonably justified in the light of the legitimate aim pursued, namely, ensuring peaceful family relations by securing acquired rights, sometimes long-standing ones.

The applicant appealed on points of law. In a judgment of 14 November 2007, the Court of Cassation dismissed the appeal, upholding the Court of Appeal's reasoning and adding that the distribution of the estate between the two legitimate children, on the mother's death in 1998, had been done before the Law of 2001 came into force, which was why the provisions of that Law relating to new inheritance rights of illegitimate children were not applicable to Mr Fabris. Section 25 of the Law of 3 December 2001 provided that the provisions of that Law were not applicable to inheritance arrangements that had already given rise to distribution before the Law came into force.

## Complaints, procedure and composition of the Court

Relying on Article 14 (prohibition of discrimination) taken together with Article 1 of Protocol No. 1 (protection of property) and Article 8 (right to respect for private and family life) of the Convention, Mr Fabris complained of his inability to assert his inheritance rights.

The application was lodged with the European Court of Human Rights on 1 April 2008.

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

Dean **Spielmann** (Luxembourg), *President*,  
 Jean-Paul **Costa** (France),  
 Boštjan M. **Zupančič** (Slovenia),  
 Mark **Villiger** (Liechtenstein),  
 Isabelle **Berro-Lefèvre** (Monaco),  
 Ann **Power** (Ireland),  
 Angelika **Nußberger** (Germany), *Judges*,

and also Claudia **Westerdiek**, *Section Registrar*.

## Decision of the Court

The Court observed that it was on the basis of the transitional provisions of the Laws of 1972 and 2001 that the French courts had refused Mr Fabris the right to challenge the distribution of the estate *inter vivos* to his mother's legitimate children. Both Laws had laid down specific rules regarding their application to inheritance arrangements that had already been implemented (see above).

The Court reiterated that the authorities enjoyed a wide discretion when examining the various competing rights and interests and that it was not, in theory, required to settle disputes of a purely private nature. That being said, in exercising the European supervision incumbent on it, it could not remain passive where a national court's interpretation of a legal act appeared unreasonable, arbitrary or discriminatory.

With regard to Mr Fabris's case, the Court noted, like the Court of Appeal and the Court of Cassation, that when the claimant brought his action for abatement in 1998, there had been an established legal situation in existence since 1970 (*inter vivos* distribution of Mr and Mrs M.'s estate to their two legitimate children).

As the domestic courts had held, the inability to challenge *inter vivos* donations made before the Law of 1972 came into force was justified by the need to guarantee the principle of legal certainty in respect of such donations. The Court of Appeal had thus held that there was objective and reasonable justification for section 14 of the Law of 1972, which had not been repealed by the Law of 2001, in the light of the legitimate aim pursued, namely, ensuring peaceful family relations by securing rights acquired in that context, sometimes long-standing ones. The Court of Cassation also had regard to the fact that the distribution of the estate between the two legitimate children, on the mother's death, had been done before the Law of 2001 came into force and concluded that the provisions of that Law relating to new inheritance rights of illegitimate children were not applicable to Mr Fabris.

In the Court's view, that interpretation of the transitional provisions pursued the legitimate aim of guaranteeing the principle of legal certainty.

Unlike the case of *Mazurek v. France*, in which the estate had not yet been distributed, the Court found that the difference of treatment between Mr Fabris and his mother's legitimate children was proportionate to the aim in question.

The Court found that the national courts, in applying the transitional provisions of the Laws of 1972 and 2001, had correctly balanced the long-standing rights acquired by Mr and Mrs M.'s legitimate children on the one hand against the pecuniary interests of Mr Fabris on the other. There had therefore been no violation of Article 14 of the Convention taken together with Article 1 of Protocol No. 1.

In the absence of separate arguments, the Court found that it was not necessary to examine separately the complaint under Article 14 taken together with Article 8.

## Separate opinion

Judges Spielmann and Costa expressed a separate opinion, which is annexed to the judgment.

*The judgment is available only in French.*

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