

Press release issued by the Registrar

**JUDGMENT IN THE CASE OF FRETTE v. FRANCE**

The European Court of Human Rights has today notified in writing its judgment in the case of *Fretté v. France* (36515/97), which is not final<sup>1</sup>.

The Court held:

- by four votes to three, that **there had been no violation of Article 14** of the European Convention on Human Rights (prohibition of discrimination) taken together with **Article 8** of the Convention (right to respect for private and family life), and
- unanimously, **that there had been a violation of Article 6** of the Convention (right to a fair hearing).

Under Article 41 (just satisfaction), the Court awarded the applicant 3,500 euros for costs and expenses. (The judgment is in the French language only.)

**1. Principal facts**

The applicant, Philippe Fretté, a French national, was born in 1954 and lives in Paris.

In a decision of 3 May 1993 the Paris Social Services, Youth and Health Department refused the applicant's request for prior authorisation to adopt a child. An appeal lodged by the applicant on 21 May 1993 was dismissed in a decision of 15 October 1993 on the ground that the applicant's "choice of lifestyle" did not appear to be such as to provide sufficient guarantees that he could give a child a suitable home from an educational, psychological and family perspective.

In a judgment of 25 January 1995 the Paris Administrative Court set aside the decisions refusing the applicant authorisation. It noted that there was no evidence to establish or even suggest "that Mr Fretté's lifestyle denoted a lack of moral rigour or emotional stability, or a risk that he would abuse the adoption process, or any other conduct indicating that his plan to adopt presented a risk to any child adopted".

Paris Social Services appealed to the *Conseil d'Etat*, which set aside the Administrative Court's judgment and, in a ruling on the merits, dismissed the applicant's request for prior authorisation. It held that the applicant, "having regard to his lifestyle and despite his clear

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1. 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.

personal qualities and aptitude for bringing up children, did not provide the requisite safeguards – from an educational, psychological and family perspective – for adopting a child”.

## 2. Procedure and composition of the Court

The application was lodged with the European Commission of Human Rights on 1 April 1997 and referred to the European Court of Human Rights on 1 November 1998. It was declared partly admissible on 12 June 2001. A hearing was held on 2 October 2001.

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

Willi **Fuhrmann** (Austrian), *President*,  
Jean-Paul **Costa** (French),  
Pranas **Kūris** (Lithuanian),  
Françoise **Tulkens** (Belgian),  
Karel **Jungwiert** (Czech),  
Nicolas **Bratza** (British),  
Kristaq **Traja** (Albanian), *judges*,

and also Sally **Dollé**, *Section Registrar*.

## 3. Summary of the judgment<sup>2</sup>

### Complaints

The applicant complained that the decision dismissing his request for authorisation to adopt amounted to arbitrary interference with his private and family life because it was based exclusively on unfavourable prejudice about his sexual orientation. He relied in that connection on Article 14, taken together with Article 8. He further complained that he had not been summoned to the hearing held by the *Conseil d'Etat*, contrary to Article 6 § 1.

### Decision of the Court

#### Article 14 taken together with Article 8

The Court was first required to consider whether the facts of the case fell within the scope of Article 8, and accordingly within that of Article 14.

The Court observed that the Convention did not guarantee, as such, the right to adopt. The right to respect for family life presupposed the existence of a family, but Article 8 did not protect the mere desire to start a family. However, French domestic law authorised any unmarried person – man or woman – to apply to adopt, and it appeared that the French authorities had refused the applicant's request for prior authorisation, albeit implicitly, on the ground of his sexual orientation alone. The Court accordingly concluded that there had been a difference in treatment based on the applicant's sexual orientation, a concept which was undoubtedly covered by Article 14. The applicant's right under Article 343-1 of the Civil Code, which fell within the ambit of Article 8, had therefore been infringed on the decisive basis of his sexual orientation and Article 14 was applicable.

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2. This summary by the Registry does not bind the Court.

Turning to the merits of the case, the Court noted, firstly, that the decisions refusing authorisation pursued a legitimate aim, namely protecting the health and rights of children who might be concerned by an adoption procedure, for which the granting of authorisation constituted in principle a precondition. The Court observed that the Contracting States enjoyed a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justified a different treatment in law. In a case like the present one where the difficult questions raised concerned areas in which there was very little common ground between the member States of the Council of Europe and where, in general, the law seemed to be going through a transitional phase, a broad margin of appreciation had to be left to the authorities of each State, who were in direct and continuous contact with the vital forces of their countries and were in principle better placed than an international court to evaluate local needs and conditions.

In the present case, concerning the competing interests of the applicant and adoptable children, the Court could only note that the scientific community – especially child-care specialists, psychiatrists and psychologists – was divided over the possible consequences of children being brought up by one or more homosexual parents, regard being had in particular to the limited number of scientific studies on the subject published to date. In addition, there were wide differences of opinion both within and between individual countries, not to mention the low ratio of adoptable children to prospective adoptive parents. That being so, the national authorities could legitimately and reasonably have considered that the right to be able to adopt asserted by the applicant under Article 343-1 of the Civil Code was circumscribed by the interests of adoptable children, notwithstanding the applicant's legitimate aspirations and without his personal choices being called into question.

#### Article 6

The Court recalled that the principle of equality of arms – a component of the broader concept of a fair trial - required that each party be afforded a reasonable opportunity to present his case under conditions that did not place him at a substantial disadvantage *vis-à-vis* his opponent. That meant in principle that the parties to a trial must have the right to have knowledge of all evidence adduced or observations filed.

The Court noted that the applicant, who maintained that he had made a number of telephone calls to the registry of the *Conseil d'Etat* to find out the date of the hearing without receiving a clear answer or being informed of the possibility of requesting notice of the date in writing, was not summoned to the hearing in the *Conseil d'Etat*. As a result, he had not had the opportunity to have knowledge of the submissions of the Government commissioner. Not being represented, he was not able to obtain a general idea of their content before the hearing either. That had deprived him of the possibility of filing a rejoinder in the form of a note to the court at the deliberations stage. He had therefore been denied a fair hearing of his case in adversarial proceedings, in breach of Article 6 § 1.

Judge Costa, joined by Judges Jungwiert and Traja, expressed a partly concurring opinion. Judges Fuhrmann, Tulkens and Bratza expressed a dissenting opinion. Those opinions are annexed to the judgment.

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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 in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.*