

(TRANSLATION)

## THE FACTS

The facts of the case, as they have been submitted, may be summarised as follows.

The applicants, all Belgian nationals, are the following :

- 1) Lucile Marie DE MOT, resident in Brussels, who is represented by the second and third applicants,
- 2) Pauline SLOSSE, chemist, resident in Brussels,
- 3) Alain DE MOT, commercial engineer, resident in Brussels,
- 4) Cécile CHEUDE, social worker, resident in Brussels,
- 5) Pierre SLOSSE, lawyer, resident in Brussels,
- 6) Micheline HEILPORN, unemployed, resident in Brussels,
- 7) Jean DE MOT, commercial engineer, resident in Brussels.

They are represented before the Commission by: Mr. Johan VANDEN EYNDE, Mrs. Carine HIRSCH and Mr. Pierre STOQUART of the Brussels Bar.

The first applicant was born in Anderlecht on 19 January 1982.

The second applicant officially recognised the first before the registration officer in Anderlecht, on 2 March 1982, and the third applicant officially recognised her on 23 February 1982.

The fourth and fifth applicants are the maternal grandparents of the first applicant.

The sixth and seventh applicants are the paternal grandparents of the first applicant.

The applicants consider themselves to be victims of violations of the Convention resulting from the effects under Belgian law of the "illegitimate" status of Lucile Marie De Mot (the first applicant) on the establishment of her maternal and paternal filiation, on the extent of her family relationships and on the patrimonial rights of the various applicants.

*With regard to the establishment of the maternal filiation of Lucile Marie De Mot (the first applicant) :*

Under Belgian law, the maternal filiation of an "illegitimate" child is established neither by his birth alone, nor even by the obligatory entry of the mother's name on the birth certificate (Article 57 of the Civil Code). Articles 334 and 341a of the Civil Code require either voluntary recognition or a court declaration as to

maternity. On the other hand, under Article 319 of the Civil Code, the filiation of a married woman's child is proved simply by the birth certificate.

In Belgian law, children born out the wedlock can establish their maternal filiation only by bringing an action for that purpose (Articles 341a, 341c of the Civil Code) ("action en recherche de maternité").

*With regard to the establishment of Lucile Marie De Mot's paternal filiation :*

Under Belgian law (Articles 334 ff. of the Civil Code), the father must recognise his daughter before the registration officer, and this recognition may be contested by anyone with an interest in so doing (Article 339 of the Civil Code).

Descent from a "legitimate" father may not, however, be contested by anyone. The presumption of "legitimate" paternity is irrebuttable, unless the lawful father brings an action disclaiming paternity.

*With regard to the extent in law of Lucile Marie De Mot's family relationships :*

Under Belgian law, a "legitimate" child is fully integrated from the moment of his birth into the family of each of his parents, whereas a recognised "illegitimate" child, and even an adopted "illegitimate" child, remains in principle a stranger to his parents' families. If his parents are no longer alive, he requires the consent of his guardian to marry before the age of 21, and not, like a legitimate child, the consent of his grandparents (Article 159 of the Civil Code). No maintenance obligations exist between the child and the grandparents.

Lucile Marie De Mot has no legal bond with her grandparents (the fourth, fifth, sixth and seventh applicants) *ipso jure*.

*With regard to the patrimonial rights of the applicants :*

The Civil Code limits the rights of a child born out of wedlock and his parents and grandparents in respect of gifts *inter vivos* and *mortis causa* and intestate succession (Articles 338, 724, 756-758, 760, 761, 769-773 and 913 of the Civil Code):

Until his recognition, a child born out of wedlock has no rights of succession in the estates of his parents. On being recognised, he merely acquires the status of an "exceptional" heir ("*successeur irrégulier*"). Moreover, he has no claim on the estates of his grandparents.

He may receive from his parents by gift or legacy no more than his entitlement under the title "Inheritance on Intestacy" in the Civil Code (Article 908). A "legitimate" child, on the other hand, has the status of presumed heir ("*héritier présomptif*") to his parents and grandparents. There are no restrictions, on his capacity to receive by gift or legacy.

Once they have recognised their child, "illegitimate" parents may make provision for him only to a limited extent, whereas "legitimate" parents are subject to no such restrictions.

As grandparents have no legal bond with illegitimate grandsons or granddaughters, gifts *inter vivos* or *mortis causa* to such grandchildren are taxed at the rate applying between unrelated persons and not at that applying between ascendants and direct descendants, as in the case of "legitimate" children.

## COMPLAINTS

The complaints may be summarised as follows :

The applicants allege that there has been a violation of Article 8 of the Convention, taken alone, of Article 14 in conjunction with Article 8, and of Article 14 in conjunction with Article 1 of Protocol No. 1.

1. With regard to the establishment of maternal filiation, they allege that the child and her mother have been the victims of a violation of Article 8, taken alone, and of Article 14 in conjunction with Article 8.

Under present legislation, the mother (the second applicant) was obliged to recognise her daughter officially. In so doing, she prejudiced her, since her capacity to make bequests or gifts of her property to her is restricted (Article 908 of the Civil Code). To have retained the possibility of making provision in favour of her daughter, she would have had to refrain from establishing any legal family bond with her, as will be explained below. This dilemma violates the very principle of "respect" for private life, and thus Article 8 of the Convention (see Eur. Court H.R., *Markcx* judgment of 13 June 1979, Series A no. 31, p. 16, para. 36).

Moreover, the difference in treatment between an "illegitimate" and a "legitimate" mother has absolutely no objective and reasonable justification. The second applicant is thus the victim of a violation of Article 14 in conjunction with Article 8 of the Convention (*op. cit.*, p. 20, para. 43).

Furthermore, the restrictions inherent in the requirement to bring an action to establish maternal filiation constitute a lack of respect for the private life of the child born out of wedlock, who was legally motherless from 19 February to 1 March 1982, and thus violate Article 8 of the Convention (*op. cit.*, p. 17, para. 37).

There is no objective and reasonable justification for this difference in treatment between illegitimate and legitimate children, which thus violates Article 14 in conjunction with Article 8 of the Convention (*op. cit.*, p. 20, para. 43).2.

2. With regard to the establishment of paternal filiation, the applicants allege that there has been a violation of Article 8, taken alone, and of Article 14 in conjunction with Article 8, with respect to the child and her father.

Recognition is by no means sufficient to ensure that the father (the third applicant) can enjoy his paternal bond with his daughter undisturbed. In fact, his recognition may be contested by anyone, even by the public prosecutor. Any other man may also lodge a rival claim, recognising the child as his. At any stage, the father thus runs the risk of having to face claims or accusations from possibly ill-intentioned persons.

This state of insecurity is incompatible with the notion of "respect" for private and family life, and thus violates Article 8 of the Convention.

In fact, no one may contest the paternity of a "legitimate" father. The presumption of "legitimate" paternity is irrebuttable, unless the legal father brings an action disclaiming paternity.

There is no objective and reasonable justification for the distinction made between the status of "legitimate" and "illegitimate" fathers, and this distinction thus violates Article 14 in conjunction with Article 8 of the Convention.

Once her father had recognised her, Lucile Marie De Mot was given his nationality and name. Were anyone to contest this recognition, she would lose both and again be given her mother's name and nationality. If subsequently recognised by a third party, she would assume the name of that third party. This insecurity violates respect for private and family life, and thus the provisions of Article 8 of the Convention.

This discrimination between illegitimate and legitimate children is entirely unjustified, and thus constitutes a violation of Article 14 in conjunction with Article 8 of the Convention.

3. With regard to the extent in law of Lucile Marie De Mot's family relationships, the applicants allege that there has been a violation of Article 8, taken alone, and of Article 14 in conjunction with Article 8, with respect to the child and her grandparents.

Belgian law automatically deprives Lucile Marie De Mot of any legal bond with her grandparents (the fourth, fifth, sixth and seventh applicants), to whom she is deeply attached. This means that, in law, she has no grandparents.

The Court has ruled (*op. cit.*, p. 21, para. 45) that "family life" within the meaning of Article 8 certainly includes the ties between near relatives, and thus the ties between grandparents and grandchildren.

Respect for family life implies that a person's family relationships must be allowed to develop normally. Belgian law prevents family life from developing normally and Lucile Marie De Mot must therefore be regarded as the victim of a violation of Article 8 of the Convention.

There is no objective and reasonable justification for this discrimination between a granddaughter born out of wedlock and a granddaughter born in wedlock, which therefore violates Article 14 in conjunction with Article 8 of the Convention.

As for the grandparents (the fourth, fifth, sixth and seventh applicants), Belgian law deprives them of any legal bond with their granddaughter, to whom they are deeply attached.

In their view, Belgian law violates respect for family life and thus Article 8 of the Convention.

There is no objective and reasonable justification for the distinction made between the situation of "legitimate" and "illegitimate" grandparents, which constitutes a violation of Article 14 in conjunction with Article 8 of the Convention.

4. As for their patrimonial rights, the applicants allege:

— a violation of Article 14 in conjunction with Article 8, with respect to the child;

— a violation of Article 14 in conjunction with Article 8, and Article 14 in conjunction with Article 1 of Protocol No. 1, with regard to the parents and grandparents.

Until recognised by her parents, Lucile Marie De Mot had no rights of succession in their estates. Having been recognised, she merely acquired the status of an "exceptional heir" ("successeur irrégulier"). She has, moreover, no legal claim on her grandparents' estates. She may receive by gift or legacy from her parents no more than her entitlement under the title "Inheritance on Intestacy" in the Civil Code (Article 908 of the Civil Code). If born in wedlock, however, she would have had the status of presumed heir (heritière présomptive) to her parents and grandparents and there would have been no restrictions on her capacity to receive by gift or legacy.

There is no objective and reasonable justification for this discrimination between illegitimate and legitimate children, which constitutes a violation of Article 14 in conjunction with Article 8 of the Convention (*op. cit.*, p. 26, para. 59).

Having recognised Lucile Marie De Mot, the second and third applicants have only limited capacity to make provision for their daughter, whereas "legitimate" parents are subject to no restrictions in this area.

There is no objective and reasonable justification for this distinction between the capacity of "legitimate" and "illegitimate" parents, which thus constitutes a violation of Article 14 in conjunction with Article 8 of the Convention (*op. cit.*, p. 27, para. 62). This restriction on capacity also violates Article 1 of Protocol No. 1, which guarantees in substance the right to property, and thus the right to dispose freely of property, as well as Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1 (*op. cit.*, p. 28, para. 65).

Since the fourth, fifth, sixth and seventh applicants have no legal bond with Lucile Marie De Mot, any gifts or legacies which they make to her are taxed at the rate applying between unrelated persons, and not at the rate applying between direct ascendants and descendants, as in the case of children born in wedlock. There is no objective or reasonable justification for this distinction, which thus constitutes a violation of Article 14 in conjunction with Article 8 of the Convention and Article 1 of Protocol No. 1.

The applicants are seeking fair compensation for the damage which they have suffered.

## THE LAW

1. The applicants allege that certain provisions in the Belgian Civil Code governing the status of children born out of wedlock, and more particularly those dealing with the establishment of maternal and paternal filiation and the legal extent of the family relationships of such children and those dealing with the children's rights of intestate succession and rights to receive gifts and legacies, discriminate against children in this category, such as Lucile Marie De Mot (the first applicant).

They further allege that these provisions constitute unwarranted interference with the private and family life of the unmarried mother and the father (the second and third applicants) and the grandparents (the fourth, fifth, sixth and seventh applicants), as well as an infringement of their right to enjoyment of possessions.

They also argue that both Lucile Marie De Mot and her parents and grandparents are the victims of discrimination resulting from the provisions complained of.

They allege, with reference to the above, that there has been a violation of Article 8 of the Convention, taken alone, and of Article 14, taken in conjunction with Article 8 of the Convention and Article 1 of Protocol No. 1, and also the latter on its own.

2. The Commission notes at once that this application, concerning the position in Belgian law of children born out of wedlock, is similar in many respects to a case previously examined by the European Commission and Court of Human Rights which resulted in the Marckx judgment (Eur. Court H.R., Marckx judgment of 13 June 1979, Series A no. 31).

In the light of the Court's judgment in the Marckx case, the Commission will thus start by examining the applicants' complaints concerning the establishment of maternal filiation, the legal extent of the family relationships of a child born out of wedlock, and finally the patrimonial rights of applicants (the unmarried mother and the grandparents) in respect of the child born out of wedlock.

Under Belgian law (Articles 334 and 331a of the Civil Code), the maternal filiation of an "illegitimate" child is established either by voluntary recognition or by a court declaration as to maternity; under Article 319 of the Civil Code, however, inclusion of the birth certificate in the Register of Births, Marriages and Deaths is enough to prove the filiation of a married woman's child.

Moreover, the only way in which a child born out of wedlock can establish maternity is by bringing an action for that purpose (Articles 341a-341c of the Civil Code), whereas no such procedure is necessary for the child of a married woman.

The applicants argue that this system constitutes a violation of Article 8 of the Convention, taken alone and in conjunction with Article 14, with regard to the mother and the child.

The Government refer to the principles established by the Marckx judgment, and particularly the principle *mater semper certa est*. They accept this, and regard the application as admissible on this matter.

Moreover, under Belgian law, while a child born in wedlock is fully integrated from the moment of his birth into the family of each of his parents, this is not the case with an "illegitimate" child who, when recognised and even adopted, remains in principle a stranger to his parents' families.

The applicants regard this situation as incompatible with Article 8 of the Convention, taken alone and in conjunction with Article 14.

The Government refer to the Marckx judgment, particularly with reference to the maternal grandparents, and regard the application as admissible on this matter.

Finally, the Belgian Civil Code restricts, to varying degrees, the rights of illegitimate children and unmarried mothers in intestate succession, and with gifts *inter vivos* or *mortis causa* (Articles 338, 324, 756-758, 760, 761, 769-773 and 913 of the Civil Code).

Until his recognition, a child born out of wedlock has no rights of succession in his mother's estate. On being recognised, he merely acquires the status of an "exceptional heir" ("*successeur irrégulier*"). He has no rights of succession in the estate of his mother's family. Moreover, his mother may make bequests or gifts to him only within the limits prescribed in the title "Inheritance on Intestacy" (Article 908). On the other hand, the law confers on "legitimate" children from birth, or even conception, all the patrimonial rights of which it deprives Lucile Marie De Mot; it does not restrict the right of married women to dispose of their property, as it does that of the mother of Lucile Marie De Mot.

In the applicants' view, this system constitutes a violation of Article 14 taken in conjunction with Article 8 of the Convention, with regard to the child, and a breach of Article 14 in conjunction with Article 8 of the Convention and with Article 1 of Protocol No. 1 with regard to the mother and the grandparents.

The Government again refer to the Marckx judgment, and consider the application admissible on these matters.

It is now up to the Commission to decide whether, having regard to the Court's decision in the Marckx case (*op. cit.*, pp. 16 and 17, paras. 36 and 37; pp. 18-20, paras. 38-43; pp. 21 and 22, paras. 45-48; pp. 22-26, paras. 49-59; pp. 27 and 28, paras. 61-65), Belgian law, as applied in this case, violates the above provisions of the Convention.

In the light of a preliminary examination of the parties' arguments, of its own case-law and of the case-law of the Court, it considers that the applicants' complaints raise problems of interpretation sufficiently complex and important to require an examination of the merits of the case, and thus that the application cannot be declared manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

3. The second series of complaints raised by the applicants concerns the way in which paternal filiation is established, and the effects of that procedure on the relationship between the child, Lucile Marie De Mot, and her paternal grandparents.

The applicants consider that both Lucile Marie De Mot and her father and grandparents are the victims of interference with their private and family life, and of humiliation and discrimination, violating Article 8, taken alone and in conjunction with Article 14 of the Convention.

More specifically, they complain of the provision in Belgian law which requires voluntary or judicial recognition and which, under Article 339 of the Civil Code, is open to challenge by anyone, including the public prosecutor. The applicants argue that this situation creates a legal insecurity which infringes the very concept of "respect for private and family life", enshrined in Article 8 of the Convention.

Here, the applicants point out that Lucile Marie De Mot was given her father's nationality and name on being recognised by him. Were this recognition to be challenged later, she would lose her father's name and nationality and again be given those of her mother, and, if subsequently recognised by a third party, would take that third party's name.

The applicants see discrimination in the fact that the "illegitimate" paternity may be challenged, whereas the presumption of "legitimate" paternity is irrefutable, unless the presumed father brings an action disclaiming paternity.

The applicants claim that there is absolutely no objective and reasonable justification for this distinction between the status of an "illegitimate" father and child and the status of a "legitimate" father and child, which is thus discriminatory and a violation of Articles 14 and 8 of the Convention.



The Belgian Government justify the distinction made between the status of an "illegitimate" father and the status of a "legitimate" father on the ground, firstly, that it derives from the absence of a marriage and, secondly, that "illegitimate" filiation cannot be established in practice unless the father recognises the child. Moreover, since voluntary recognition is not officially verified, it is logical that it should be open to challenge by third parties.

The Commission has considered this part of the application with reference to Articles 8 and 14 of the Convention, which provide as follows :

Article 8 :

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

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 14 :

"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 takes the view that the formal procedures for voluntary recognition by the father of a child born out of wedlock or, failing this, a court ruling on paternity are normal and reasonable requirements. In the absence of marriage ties between the unmarried mother and the presumed father, a formal procedure to establish paternity is in fact necessary.

To the extent that this requirement may be regarded as interfering with the private and/or family life of the people concerned, it is thus justified, under Article 8 para. 2 of the Convention, as being necessary in a democratic society for the protection of the rights and freedoms of others. Since the requirement is both objective and reasonable, it does not violate Article 14 in conjunction with Article 8 of the Convention.

This part of the application must accordingly be rejected under Article 27 para. 2 of the Convention as being manifestly ill-founded.

4: Finally, the applicants point out that gifts received by an illegitimate child from grandparents are taxed at the rate applying to unrelated persons, and not at the rate applying to direct ascendants and descendants, as in the case of legitimate children.

They argue that there is no objective and reasonable justification for this distinction, which therefore violates Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1.

With regard to this complaint, the Government point out that a bill has been tabled in Parliament, removing all fiscal discrimination in relation to gifts and legacies received by children.

In the light of an initial examination of the parties' arguments, the Commission considers that this complaint also raises complex and important questions of interpretation, calling for an examination of the merits, and thus that the application cannot, on this point, be declared manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons the Commission, without prejudging the merits of the case,

**DECLARES ADMISSIBLE** the applicants' complaint concerning the way in which the paternal filiation of a child born out of wedlock is established;

**DECLARES INADMISSIBLE** the remainder of the application.