

APPLICATION N° 31401/96

Dagan and Sonia SANDERS v/FRANCE

DECISION of 16 October 1996 on the admissibility of the application

Article 12 of the Convention *The national laws concerning the right to marry may govern the exercise thereof but not restrict or reduce that right in such a way or to such an extent that the very essence of the right is impaired*

A limitation introduced by substantive rules designed inter alia to preclude marriages of convenience with an alien is not in itself contrary to Article 12

In this case the time taken to issue a certificate of capacity to marry (which was merely the time taken to process the application) did not impair the very essence of the applicants' right to marry

THE FACTS

The applicants are husband and wife. He is a Turkish national, born in 1946 and she is a French national, born in 1972. They live together in Istanbul.

The applicants complain mainly about the difficulties they encountered at the French consulate general in Istanbul in obtaining a certificate of capacity to marry, despite the fact that they were engaged.

They applied for the certificate at the consulate on 10 April 1995. On 15 May 1995 they went back to the consulate to collect it. They allege that they were told by a guard there that the document had not yet arrived and that the same guard hit Ms. Sanders as she was trying to enter the building.

In a letter of 10 November 1995, the Registry Office for French citizens resident abroad (in Nantes) informed the applicants that, in accordance with section 175 (1) of the Civil Code Nantes State Counsel had been asked to approve their intended marriage and that Ms Sanders would be issued with the certificate as soon as State Counsel had made his decision known

The applicants contacted the Turkish Ministry for Foreign Affairs in Istanbul and, on 9 January 1996, the deputy consul informed the Ministry that State Counsel had made an order postponing the marriage, but that this order had been lifted in December 1995. The certificate of capacity to marry, which was sent to Istanbul in December 1995 had been held up at Istanbul customs, so the consulate did not receive it until January 1996. The deputy consul stated that the applicant could come and collect the certificate any time after 10 January 1996

On 15 May 1996 the applicants received confirmation from Nantes Registry Office that State Counsel had completed his enquiries and authorised the consular authorities to issue the certificate, so that Ms Sanders could now collect it in person from the consulate

However Ms Sanders, believing that the consulate was colluding with her family in France who she claimed, disapproved of her marriage and were trying to have her forcibly repatriated so that they could have her committed to a psychiatric hospital and, ultimately disinherit her, did not go and collect the certificate

Meanwhile the applicants married on 1 December 1995 and a child was born in February 1996

Relevant domestic law

Section 175 of the Civil Code

In both cases provided for in the preceding section [minority or insanity] a guardian with full powers (*tuteur*) or with limited powers (*curateur*) cannot during the period of his guardianship oppose the intended marriage unless he has been authorised to do so by a family council which he may convene

Section 175 (1) of the Civil Code

State Counsel can oppose the marriage in cases where there are grounds for requesting it to be annulled

The Civil Code provides that the registrar of births, marriages and deaths shall refer applications for a certificate to State Counsel. This is designed to preclude marriages of convenience. For French citizens residing abroad, applications are referred to Nantes State Counsel

State Counsel can oppose the marriage or decide that it should be postponed Section 175 (2), sub-paragraph 4 of the Civil Code provides

' A marriage cannot be solemnised until State Counsel has made known his decision to allow the marriage to proceed or where the period for which he has postponed it has expired and he has not informed the registrar that he opposes the solemnisation thereof '

COMPLAINTS (Extract)

2 Invoking Article 6 of the Convention, they [the applicants] complain that, unbeknown to them, the consul general had filed a "complaint" about them with Nantes *tribunal de grande instance*. They believe that the French authorities attempted to entice Ms Sanders to the consulate for the purposes of repatriating her and committing her to a psychiatric hospital under section 175 (1) of the Civil Code which, they allege, provides for such action. They claim that Ms Sanders is perfectly sane and produce a medical certificate to this effect.

3 They invoke Article 8 of the Convention, complaining of collusion between the applicant's family in France and the consular authorities. They claim that the family's ploys (in which they were assisted by the consulate) were designed to disinherit Ms Sanders.

4 They consider themselves to be victims of discrimination on grounds of Mr Sanders' nationality and religion, contrary to Article 14 of the Convention.

5 They invoke, lastly, Article 2 of Protocol No. 4 to the Convention, claiming that the French authorities urged Ms Sanders' family to tell her to go to the consulate, in order to then forcibly repatriate her to France.

THE LAW (Extract)

1 The Commission has first examined the applicants' complaints under Article 12 of the Convention, which provides

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

As interpreted by the Convention organs, this Article guarantees the fundamental right for a man and a woman, to marry and found a family. The exercise thereof shall be subject to the national laws of the Contracting States, but the limitations thereby introduced must not restrict or reduce the right in such a way or to such an extent

that the very essence of the right is impaired" (Eur. Court HR, Rees v. the United Kingdom judgment of 17 October 1986, Series A no. 106, p. 19, para. 50; F. v. Switzerland judgment of 18 December 1987, Series A no. 128, p. 16, para. 32).

As noted by the Court in the above-mentioned F. v. Switzerland judgment, in all the Council of Europe's member States, these limitations appear as conditions and are embodied in procedural or substantive rules (relating mainly to capacity, consent and certain impediments).

The Commission notes that, in the present case, the issue concerns substantive rules, the purpose of which is, *inter alia*, to preclude marriages of convenience between French citizens and aliens. It does not find this limitation, in itself, to be contrary to Article 12 of the Convention.

The Commission has also examined the issue whether the time taken by the French authorities to issue the certificate of capacity to marry was such as to infringe Article 12 of the Convention. It observes, however, that this case can be distinguished from the above-mentioned case of F. v. Switzerland. There, the statutory period for which the applicant had to wait before he could remarry amounted to a civil penalty. In the present case, the proceedings were delayed because the authorities had to process the application.

However regrettable this period of time may have been, the Commission considers that it did not impair the very essence of the applicants' right to marry.

It follows that this aspect of the application is manifestly ill-founded, within the meaning of Article 27 para. 2 of the Convention.

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