

APPLICATION/REQUÊTE N° 12849/87

Astrid VERMEIRE v/BELGIUM

Astrid VERMEIRE c/BELGIQUE

DECISION of 8 November 1988 on the admissibility of the application

DÉCISION du 8 novembre 1988 sur la recevabilité de la requête

Article 8, paragraph 1 of the Convention : *"Family life" includes the ties between near relatives, for instance those between grandparents and grandchildren. "Respect" for family life implies an obligation on the State to act in a manner calculated to allow these ties to develop normally.*

Article 14 of the Convention, in conjunction with Article 8 of the Convention : *Difference in treatment to the detriment of children born out of wedlock with regard to the right to inherit from their grandparents. Question of the non-retroactive effect of the Belgian law of 31 March 1987 giving effect to the Marckx judgment.*

Article 8, paragraphe 1, de la Convention : *La vie « familiale » englobe les rapports entre proches parents, par exemple entre grands-parents et petits-enfants. Le « respect » de la vie familiale implique pour l'Etat l'obligation d'agir de manière à permettre le développement normal de ces rapports.*

Article 14 de la Convention, combiné avec l'article 8 de la Convention : *Différence de traitement au détriment des enfants nés hors mariage quant au droit de succéder à leurs grands-parents. Question de la non-rétroactivité de la loi belge du 31 mars 1987 donnant suite à l'arrêt Marckx (Grief déclaré recevable).*

(TRANSLATION)

THE FACTS

The facts of the case, as presented by the parties, may be summarised as follows.

The applicant is a Belgian national, born in 1938 at Brye (Belgium), and is resident in Brussels.

Before the Commission she is represented by Mr. Kris Van Hoecke, a lawyer practising in Ghent.

The application concerns the applicant's rights of succession in the estates of her natural grandparents, the late Camille Vermeire and his wife, the late Irma Vermeire (née Van den Berghe). The applicant considers that she has been a victim of a violation of Article 8 in conjunction with Article 14 of the Convention, in view of the effects of illegitimacy, under Belgian law, on the illegitimate child's claims on the estates of its grandparents.

Camille Vermeire and Irma Van den Berghe were married at Lissewege on 19 September 1911. The three children of this marriage have since died. The applicant is the recognised illegitimate daughter of one of these children, the late Jérôme Vermeire, who died in 1939, and is thus the illegitimate grandchild of Camille and Irma Vermeire. Irma Vermeire died on 16 January 1975 and Camille Vermeire on 22 July 1980. The couple had made no provision for the transfer of their estates, which were divided between their legitimate grandchildren, Francine Vermeire and Michel Vermeire. The applicant was excluded under the former Article 756 of the Belgian Civil Code, which provided that recognised illegitimate children had no claim on the property of their father's and mother's relatives.

The applicant was brought up by her natural grandparents following the death of her father in September 1939 while performing military service during the mobilisation.

On 10 June 1981 the applicant brought legal proceedings against the legitimate grandchildren before the Brussels Court of First Instance.

By a judgment of 3 June 1983 the Court found for the applicant. It recognised her rights of succession in her grandparents' estates, ruling that no distinction could be drawn between legitimate and illegitimate children. It based this decision on the Marckx judgment, in which the European Court had found that the fact that the applicant, an illegitimate daughter, had been denied any claim on the estates of her mother's close relatives constituted a violation of Article 8 para. 1 in conjunction

with Article 14 of the Convention (Eur. Court H.R., Marckx judgment of 13 June 1979, Series A no. 31, p. 26 para. 59). On 21 June 1983 the legitimate grandchildren appealed against this judgment.

On 23 May 1985 the Brussels Court of Appeal set aside the judgment of 3 June 1983. It held that "in order for a rule of an international agreement to be considered directly applicable, one condition is that it should be sufficiently precise and comprehensive". It found that, in view of the interpretation given to it by the Marckx judgment, Article 8 of the Convention, while imposing sufficiently precise negative obligations on the State authorities, was insufficiently precise in its positive requirements, since it left to the State authorities a choice of means for the fulfilment of their obligations (*ibid.*, p. 15, para. 31).

The Court concluded that the Marckx judgment had only the value of a legal precedent, and that the interpretation given by the European Court did not have legally binding force.

By a judgment of 12 February 1987 the Court of Cassation dismissed the applicant's appeal, on the grounds that Article 8 was insufficiently precise and comprehensive to be considered directly applicable as regards the positive obligations it imposed on the State, and that the incompatibility of Belgian legislation with the Convention resulted from a change in the interpretation of Article 8 which could not be taken into consideration.

COMPLAINTS

The applicant complains that the rejection of her claim on her grandparents' estates on grounds of illegitimacy violates Article 8 in conjunction with Article 14 of the Convention. She maintains that the provisions of the Belgian Civil Code which were applied in this case constitute a discriminatory interference in her exercise of the right to respect for her private and family life, since estates should be distributed without any distinction on the grounds of birth.

The applicant further complains of a violation of Article 46 of the Convention on the grounds that, although Belgium has made the declaration provided for therein, it did take account of the judgment of the European Court in the Marckx case. She relies in particular on paragraph 58 of the said judgment which sets out the future obligations for Belgium resulting from it.

The applicant maintains that the Belgian Court denied the existence of the Convention by applying it in a manner which was not in accordance with the interpretation given in the Marckx judgment.

PROCEEDINGS

The application was introduced on 1 April 1987 and registered on 3 April 1987.

On 7 October 1987 the Commission decided to give notice of the application to the Belgian Government in application of Rule 42 para. 2 (b) of its Rules of Procedure, and to invite the Government to submit their written observations on the admissibility and merits of the application.

The Government submitted their observations on the admissibility and merits of the application on 28 March 1988, and the applicant's observations in reply reached the Commission on 28 April 1988.

On 9 July 1988 the Commission decided to invite the parties to present oral observations at a hearing in the presence of both parties on the admissibility and merits of the application.

The hearing took place on 8 November 1988.

The parties appeared as follows :

For the Government :

Mrs. Michèle AKIP,	as Deputy Agent for the Government
Mr. Gilbert KIRSCHEN,	a lawyer practising in Brussels, as Adviser

For the applicant :

Mr. Kris VAN HOECKE,	a lawyer practising in Ghent
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The applicant and her husband, Mr. Stanley Henneuse, were present at the hearing.

SUBMISSIONS OF THE PARTIES

The Government

The conditions of Article 26 of the Convention have been observed in this case. However, the application is manifestly ill-founded under Article 27 para. 2 of the Convention.

The Government recall first of all that new legislation, adopted on 31 March 1987, fundamentally altered the earlier legal provisions concerning descent and gave full legal recognition to equality between legitimate and illegitimate children,

particularly in matters of succession (Articles 66-74 of the Act of 31 March 1987 repealing Article 756-766 of the Belgian Civil Code).

After examining briefly the effects of judgments of the European Court of Human Rights and the scope of the Marckx judgment, the Government place particular weight on the question of the compatibility of the earlier legislation with Articles 8 and 14 of the Convention, and of the retroactive effect of the Act of 31 March 1987 in matters of succession.

a. Effects of judgments of the European Court of Human Rights.

This question is governed by Articles 50-54 of the Convention. It is generally accepted that the obligation of the State is one as to the result, in other words the State is merely required to ensure that a certain result is attained and is free to choose the means by which the result is to be obtained.

The Court itself has in several of its judgments considered that the respondent State should be left the choice of means to be used in its legal system to fulfil its obligation to execute a judgment.

Thus in the Marckx case, the Court considered that its decision "cannot of itself annul or repeal these provisions: the Court's judgment is essentially declaratory and leaves to the State the choice of the means to be utilised in its domestic legal system for performance of its obligation under Article 53" (Marckx judgment, *loc. cit.*, p. 25, para. 58; Eur. Court H.R., Campbell and Cosans judgment of 22 March 1983, Series A no. 60, p. 9, para. 16; Eur. Court H.R., Guincho judgment of 10 July 1984, Series A no. 81, p. 15, para. 35 *et seq.*).

b. Effects of the Marckx judgment.

In the applicant's view the obligation on the Belgian Government arises not only from the legislator's failure to act but also from the refusal of the Belgian courts to recognise the direct effect of the Convention.

This refusal becomes apparent in the applicant's case. Whereas before the court of first instance she won her case because it was found "that the plaintiff is the heir of her grandparents and may make a claim on their estate as if she had the status of a legitimate child", neither the Court of Appeal nor the Court of Cassation felt they could decline to apply the rules of the Civil Code which pre-dated the 1987 Act. It should be noted that the Court of Appeal refused to comply with the detailed interpretation placed on Article 8 of the Convention in the Marckx judgment: "it is not possible to conclude from this provision (concerning the right to respect for private and family life) that illegitimate children have a claim on the estate of their father's relatives". Moreover, "contrary to the opinion of the Court below, Belgian courts

are not legally bound to act in conformity with the interpretation of provisions of the Convention given in a judgment of the European Court in another case". The Marckx judgment, the Court held, has only the value of "a legal precedent" and the findings contained in that decision concerning an illegitimate child's claim on the estates of relatives of a parent by whom it has been legally recognised are not directly applicable in the Belgian domestic legal system.

The Court of Cassation upheld its own case-law according to which "in order to be considered directly applicable, a rule of an international agreement must be sufficiently precise and comprehensive : in so far as Article 8 of the Convention imposes upon the Belgian State a positive obligation to create a legal status [for illegitimate children] in conformity with the principles stated in that provision, it is not sufficiently precise and comprehensive to have direct effect ; moreover, it was lawfully found in the [Marckx] judgment that Articles 8 and 14 of the Convention do not invalidate Article 756 of the Civil Code, under which illegitimate children have no claim on the estates of their father's or mother's relatives".

This case clearly showed up the difference in interpretation reflecting the divisions which arose in Belgian case-law immediately following the Marckx judgment. Whereas many "lower" courts concluded from this judgment that they could no longer apply rules of the Civil Code which had been judged incompatible with Articles of the Convention, since a violation of these Articles had been found in the Marckx judgment, the Court of Appeal and the Court of Cassation refused to recognise the direct effect of those Articles or to accept the "evolutionary" interpretation proposed in the Marckx judgment.

In spite of these differences of opinion, the view seems to have prevailed among legal writers that the legislature is the sole authority empowered to draw conclusions resulting from the interpretation given to the Convention by the European Court of Human Rights, and to make the changes to the status of children born out of wedlock required to put an end to any discrimination.

In order to comply with the judgments of the European Court, the Belgian State should have amended its legislation, particularly in regard to illegitimate children's claims on the estates of their close relations. However, since this is an obligation which results from the detailed interpretation placed on Article 8 of the Convention [by the Marckx judgment], the question inevitably arises as to the date on which this interpretation is held to have been placed on Article 8 and consequently when the obligation came into being for the State to bring its legislation into line with the Convention. The European Court concedes that this interpretation of the Convention has not always prevailed, and that it needs to be interpreted "in the light of present-day conditions", that evolution towards equality has progressed slowly and that differences between the treatment of illegitimate and legitimate children, for example in the field of patrimonial rights, were formerly considered permissible and normal.

It is therefore necessary to consider at what date the law needed to be amended, and since it was impossible to amend the law as soon as the new interpretation of the Convention was known, what were its extent and effects in time. On this point the European Court only gave vague indications in the Marckx judgment, stating that “the principle of legal certainty dispenses the Belgian State from re-opening legal acts or situations that antedate the delivery of the present judgment”.

In any case, whatever the effects over time of changes in legislation, the applicant is incorrect in her assertion that Belgium is responsible in international law not only for the absence of legislation in conformity with the provisions of the Convention but also for the application of the Convention by its courts.

The dispute, recalled above, as to the direct effects of the Marckx judgment, has shown sufficiently clearly why the Belgian legal authorities were neither required to conform to this interpretation, in a particular case, of the wording of the Convention, nor dispensed from applying existing laws on the grounds that they had been tacitly repealed.

In his study on the direct applicability of Article 8 of the Convention on Human Rights, as interpreted in the Marckx judgment, Professor Rigaux insisted that it was impossible to regard as directly effective a rule whose scope had evolved since the Convention's entry into force. Moreover, despite what might be thought, the judgment itself does not state that the Court regards its new interpretation of Article 8 of the Convention as directly applicable. Its wording is perfectly compatible with the idea that the Belgian State will implement the Court's decision by a legislative reform, with retroactive effect if necessary (*Annales de droit* 1979, p. 376 *et seq.*, esp. p. 380).

c. Compatibility of the earlier legislation with Articles 8 and 14 of the Convention.

The Government refer to the Marckx judgment and merely draw the Commission's attention to the following points :

The applicant was recognised by her father, by a document drawn up by the Registrar of Births, Marriages and Deaths at Brye on 27 May 1938. Following her father's death in 1939, she was brought up by her paternal grandparents until her marriage.

It may be wondered whether it was really the intention of the grandparents that she should benefit from part of their estate. The applicant's grandfather could, under the law, have at any time drawn up a will in favour of his illegitimate granddaughter, which he did not do.

Though the earlier Article 908 of the Civil Code laid down that illegitimate children may receive by disposition *inter vivos* or by will no more than their entitlement under the title “Inheritance on Intestacy”, legal writers have considered that

“the illegitimate child’s incapacity to receive property by disposition extends only to dispositions made by his father or mother. There is no restriction on dispositions in favour of an illegitimate child by ascendants and collaterals”.

Without wishing to prejudge the legal solution which might ultimately have been reached if the other two heirs had challenged the lawfulness of such a will before the courts, the applicant’s position would have been stronger if she had been able to produce evidence of the express wishes of her grandfather to support her claims.

It is not entirely out of the question that in such a case the other two heirs might have been more willing to accept an amicable distribution.

Such a possibility was indeed envisaged by the legislator, since Section 107 of the Act of 31 March 1987, which raises the problem of non-retroactive effect, nevertheless lays down in its second paragraph that: “However, no action shall lie to challenge the validity of legal acts and distributions made before the entry into force of this Act, under which a child born out of wedlock is accorded a larger claim than under the provisions repealed by this Act.”

d. Retroactive effect of the Act of 31 March 1987 in matters of succession.

The Bill amending various legal provisions relating to descent and adoption was tabled before the Senate on 15 February 1978, more than 15 months before the Marckx judgment. This Bill aimed to abolish, as far as possible, all existing discrimination between children.

In 1978 there was no question of according this equality retroactive effect, at least in the matter of succession. Section 139 of the Bill, in the chapter entitled “Interim and final provisions”, states this explicitly: “rights of succession created by this Act or resulting from the new rules on the establishment of descent may not be exercised in respect of estates of persons deceased before this Act entered into force”.

This is merely an application of the “principle of legal certainty” recognised in the Marckx judgment. The legislator cannot have been unaware of this principle.

The judgment of 13 June 1979 gave rise to a great deal of uncertainty by ruling that it “dispenses the Belgian State from re-opening legal acts or situations that antedate the delivery of the present judgment”. Did this mean that the new Act should have retroactive effect, and if so from what date?

This question provoked long debates in Parliament, as may be seen from the various Official Reports.

The Senate’s Justice Committee ultimately decided to rule out any question of retroactive effect in matters of succession.

These discussions were taken up again during debates in the Chamber of Representatives, before which the bill was tabled in July 1985.

The text adopted by the Chamber (which became Article 107 of the bill) upholds the principle that "the provisions of this Act shall apply to children born before the date of its entry into force and still alive at that date, but shall not give rise to any claim in respect of estates of persons deceased before that date".

Paragraph 2 of that Article is aimed at confirming the validity of any legal acts and distributions, antedating the entry into force of the new Act, which might have been made disregarding the restrictions which the earlier Act placed on children born outside wedlock.

After amendment by the Chamber, the bill was returned to the Senate, and it was in the Senate's Justice Committee that the most recent discussions took place concerning the Act's temporal scope.

The report drawn up for the Senate's Justice Committee by Mrs. Staels-Dompas (Senate doc. 338-2 of 25 February 1987, 1986-87 Session) illustrates the legislature's uncertainties faced with the problem of retroactive effect. Although the text transmitted by the Chamber underwent no further amendments, several members of the Senate's Justice Committee expressed the opinion that, even in the absence of retroactive effect, the effects of international law "which is directly applicable and founded on the Convention" could not be presented.

In conclusion, a majority in both Houses of Parliament expressed their opposition to the retroactive effect of the Act for reasons connected mainly with the principle of legal certainty. The consequences of retroactive legislation on succession appeared likely to be so far-reaching that they were judged to be unacceptable. The business of redistributing estates, recalculating inheritance rights and re-opening the question of the validity of operations in which third parties had an interest in cases where inherited property had been sold, and the disturbance caused to families by actions brought by new heirs whom they may not even have known existed, all appeared unacceptable.

The "travaux préparatoires" of the Act of 31 March 1987 reveal the legislative body's uncertainties and doubts.

It is true that the legislature was faced with a genuine dilemma. However, it seemed that the practical consequences of retroactive effect would be so far-reaching that, after a great deal of discussion, they were judged to be unacceptable, and the rule followed was that the effects of legislation apply only to the future.

The applicant

Concerning the admissibility of the application, the applicant expresses surprise at the Government's claim that the application is manifestly ill-founded and should

be declared inadmissible under Article 27 para. 2 of the Convention. The Government cannot deny that the applicant is a victim, in view of the incompatibility of the former legislation with Articles 8 and 14 of the Convention (Marckx judgment, *loc. cit.*).

The least which can be said is that the various points raised in the application deserve a more detailed examination and that they are not *prima facie* manifestly ill-founded.

On the merits, the applicant notes the following :

The question whether the former provisions of the Belgian Civil Code concerning the status of illegitimate children are compatible with respect for private and family life within the meaning of Article 8 of the Convention has already been examined by the European Human Rights Institutions in the Marckx judgment. These provisions were considered incompatible on several points.

Articles 756 to 766 of the Belgian Civil Code were repealed by the Act of 31 March 1987, which was published in the *Moniteur Belge* of 27 May 1987 and entered into force on 6 June 1987.

Alongside the Civil Code, dating from 1804, and the new Act of 31 March 1987, there also exists the Act of 13 May 1955, which was published in the *Moniteur Belge* of 19 August 1955 and entered into force on 29 August 1955, ratifying the European Convention on Human Rights.

Like the Civil Code, and like the Act of 31 March 1987, the Act of 13 May 1955 forms part of Belgian law and so, as a result, does the Convention itself.

The Convention must, therefore, be applied, and where two rules conflict, the following principles must be observed :

— a more recent Act takes precedence over an earlier Act ;

— the rule that an Act repeals an earlier Act in so far as it contradicts it does not apply where the conflict is between a treaty and an Act ; where there is a conflict between a rule of domestic law and a rule of international law having direct effect in the domestic legal system, the rule established by the treaty must prevail ; the pre-eminence of the treaty rule flows from the very nature of international convention law.

This principle may, however, sometimes lead to solutions contrary to the wishes of those who drafted the treaty. For this reason it was required initially that a rule of international law, in order to have direct effect, should be precise and unconditional. Later (precisely in a case concerning "illegitimate" children) a distinction was drawn between negative and positive obligations. This distinction is, however, arbitrary.

a. Effects of the judgments of the European Court of Human Rights

The Government refer to Articles 50 to 54 of the Convention. They seem, however, to have overlooked their obligations under Article 46 of the Convention, explicitly relied upon by the applicant, that any High Contracting Party which has made a declaration to that effect must recognise as compulsory *ipso facto* and without special agreement the jurisdiction of the Court in all matters concerning the interpretation and the application of the Convention.

Essentially this means that interpretations contained in a judgment of the European Court of Human Rights have final and binding force.

The Court of Cassation accepted this in its judgment of 14 April 1983 (J.T. 1983, p. 607-620) based on the conclusions of the Advocate General, Mr. Velu: "The final and binding nature (*autorité de chose interprétée*) of interpretations by the European Court cannot therefore be ignored by the national courts of a State without laying that State open to the various legal penalties implied under the system of the Convention, by the undertakings entered into in international law by Contracting States. For these reasons it should in my view be admitted that, except where there are new facts or other objective evidence manifestly calling for the European Court's interpretative case-law to be overturned, this case-law has special authority (*autorité particulière*) and should normally be followed by the national courts."

b. Effects of the Marckx judgment

The obligations of the Belgian State under international law arise not only from its legislature's failure to act, but also from the refusal of its courts to recognise the direct effect of the Convention. The respondent Government have explained in detail the reasons which led the Court of Cassation to take this decision. It is nevertheless the case that both this judicial decision and the legislation it applied constitute a violation of the Convention.

It is not a matter of applying a particular interpretation but of applying the rule as such, even if its scope has been established only by way of interpretation.

In this case, the applicable rule is that of non-discrimination under Article 14 of the Convention. The scope of this rule includes private and family life (Article 8). The notion of private and family life also extends to questions of patrimonial rights, particularly in matters of succession: this is the "new" interpretation of the Marckx judgment. As regards the rule itself, Article 14, there is no new interpretation: the rule remains that there shall be no discrimination based on birth.

c. Compatibility of the earlier legislation with Articles 8 and 14 of the Convention

By reference to the Marckx judgment, the respondent Government cannot deny that the rejection of the applicant's claims on the estates of her grandparents on the

grounds of illegitimacy, in spite of the fact that the succession proceedings had begun after the delivery of the Marckx judgment, infringes Article 8 taken alone and in conjunction with Article 14 of the Convention.

The Government is incorrect in its assertion that Article 107, second paragraph, of the Act of 31 March 1987, was conceived specially with a view to an amicable distribution. Its main purpose was to ensure compliance with judicial decisions which had become final and binding, thereby admitting the direct effect of the Convention. Parliament did not wish to re-open these cases, even though the tax authorities had brought applications to set aside these judgments as adversely affecting their interests.

d. Retroactive effect of the Act of 31 March 1987 in the field of succession

The respondent Government maintain that the legislature was faced with a genuine dilemma; it seemed that the practical consequences of retroactive effect would be so far-reaching that they were judged to be unacceptable and the rule followed was that the effects of legislation apply only to the future. The respondent Government therefore implicitly admit that the new legislation, adopted on 31 March 1987, concerning equality between legitimate and illegitimate descent, and in particular its interim provision Article 107, is incompatible with Article 8 and Article 14 of the Convention, but justify this by reference to the principle of legal certainty.

Finally, the applicant gives her own explanation of the origin of the Act of 31 March 1987.

In conclusion it should be noted that a majority in both Houses of Parliament opposed the retroactive effect of the Act. However, they were wrong to do so, since this meant that the legislature was failing to meet all its obligations under international law.

THE LAW

The applicant complains that, as a child born out of wedlock, she was denied any rights in the estates of her grandparents. She maintains that the provisions of the Belgian Civil Code which were applied in her case constitute a discriminatory interference in the exercise of her right to respect for her private and family life contrary to Article 8, in conjunction with Article 14, of the Convention, since intestate estates should be distributed without any distinction based on birth.

Article 8 of the Convention reads as follows:

- “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 of the Convention reads :

“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 recalls, in the light of the Court’s interpretation of Article 8 in the Marckx case, that “family life”, within the meaning of Article 8, includes at least “the ties between near relatives, for instance those between grandparents and grandchildren, since such relatives may play a considerable part in family life”, and that “‘respect’ for a family life so understood implies an obligation for the State to act in a manner calculated to allow these ties to develop normally” (Eur. Court H.R., Marckx judgment of 13 June 1979, Series A no. 31, p. 21, para. 45). In that case a violation of Articles 8 and 14 of the Convention was found on the grounds that the applicant had no claim on the estates of her grandparents, in view of the fact that children born out of wedlock were treated less favourably than “legitimate” children (*ibid.*, para. 59).

By its Resolution DH (88) 3 of 4 March 1988, the Committee of Ministers, after noting the information provided by the Government of Belgium about the measures taken in consequence of this judgment (namely the adoption of new provisions on descent repealing Articles 756 to 766 of the Civil Code which discriminated against children born out of wedlock in the matter of inheritance rights), declared that the Government had fulfilled its functions under Article 54 of the Convention.

Concerning the obligations arising for the State in question from Article 53 of the Convention, the Court emphasised that “the principle of legal certainty, which is necessarily inherent in the law of the Convention as in Community law, dispenses the Belgian State from re-opening legal acts or situations that antedate the delivery of the present judgment” (*ibid.*, para. 58).

Concerning the facts of the present case, it should be noted that the applicant’s grandfather died on 22 July 1980, after the delivery of the Marckx judgment on 13 June 1979, and that the winding up of the estate was finalised before the entry into force (on 6 June 1987) of the Act of 31 March 1987, amending various legal provisions concerning descent. As regards the grandmother, it is true that she died before the delivery of the Marckx judgment, but the parties have not specified when and in what manner her estate was disposed of.

The 1987 Act concerns equality between "legitimate" and "illegitimate" descent, particularly in matters of inheritance rights. The application of this Act, however, is subject to interim provisions ; in particular its Article 107 lays down that "the provisions of this Act shall apply to children born before the date of its entry into force and still alive at that date, but shall not give rise to any claim in respect of estates of persons deceased before that date".

The submissions of the respondent Government concern the effects of judgments of the European Court of Human Rights and, in particular, the Marckx judgment, the compatibility of the earlier legislation with Articles 8 and 14 of the Convention and the retroactive effect of the Act of 31 March 1987.

On the question of the retroactive effect of the Act, the Government have explained at length the uncertainty and doubts of the legislature. However, the practical consequences of retroactive effect seemed so far-reaching that they were judged unacceptable. The rule which prevailed was therefore that the effects of legislation apply only to the future.

The applicant, on the other hand, submits that the Belgian State's obligations under the Convention arise not only from the legislature's failure to act but also from the refusal of the domestic courts to recognise the direct effects of the Convention, by reference to the above-mentioned Marckx judgment.

The Commission has carried out a preliminary examination of the submissions of the parties, particularly in the light of the judgment given by the European Court of Human Rights in the Marckx case, referred to above. It considers that the application raises serious issues in respect of Article 8 in conjunction with Article 14 of the Convention, which are sufficiently complex to require an examination of the merits.

It follows that the application cannot be declared manifestly ill-founded under Article 27 para. 2 of the Convention. It should, therefore be declared admissible, since no other ground for declaring it inadmissible has been found.

For these reasons, the Commission,

DECLARES THE APPLICATION ADMISSIBLE without prejudging the merits of the case.