

**APPLICATION/REQUÊTE N° 15213/89**

**M v/BELGIUM**

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**DECISION** of 1 July 1991 on the admissibility of the application

**DECISION** du 1er juillet 1991 sur la recevabilité de la requête

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**Article 26 of the Convention and Rule 44, paragraph 4 of the Commission's Rules of Procedure** *Purpose of the six month time limit*

*The running of the six month period is interrupted by the first letter from the applicant setting out summarily the object of the application provided that the letter is not followed by a long delay before the application is completed*

*Examination of the circumstances which might in such a case suspend the running of the period Application for a retrial not taken into account*

**Article 26 de la Convention et article 44 , paragraphe 4, du Règlement intérieur de la Commission** *Delai de six mois ratio legis*

*Le cours du délai de six mois est interrompu par la première lettre du requérant exposant sommairement l'objet de la requête à condition que cette lettre ne soit pas suivie d'un long laps de temps avant que la requête soit complétée*

*Examen des circonstances susceptibles en pareil cas de suspendre le cours du délai  
Procédure en révision non prise en considération*

## Summary of the facts

*The applicant, a Belgian national born in 1936, is represented by Mr Luc Misson, a lawyer practising in Liège*

*The applicant cohabited with a married man from 1971 until the latter's death in 1979. In his will the cohabitee made his daughter and the applicant his universal legatees*

*The lawfulness of the legacy in favour of the applicant was contested by the widow and the daughter. The Court of First Instance upheld the legacy on 26 March 1981. On 19 May 1982, on appeal by the daughter and the widow, the Court of Appeal ruled that the legacy was unlawful. The applicant's appeal on points of law was dismissed on 3 March 1983. On 13 June 1984 the applicant lodged an application for a retrial concerning the judgment of 19 May 1982. These proceedings are still pending*

*(TRANSLATION)*

## THE LAW

The applicant alleges that in annulling the legacy left to her by her cohabitee the Court of Appeal infringed her rights to family life and peaceful enjoyment of her property, by establishing discrimination between married and unmarried couples, contrary to Article 8 of the Convention and Article 1 of Protocol No. 1, taken separately and in conjunction with Article 14 of the Convention. She also complains that she was denied the access to a court guaranteed by Article 6 of the Convention, in that it was allegedly impossible for her to raise the above complaints in the Court of Cassation.

The Commission has first examined the question of the date of introduction of the present application. The applicant wrote to the Commission for the first time on 12 December 1982 in a letter briefly setting out all her complaints. On 8 February 1983 the Commission Secretariat sent her a letter drawing her attention to the need to exhaust domestic remedies. The letter also informed her that the application would be registered as soon as she returned the application form she had been given during a visit to the Commission Secretariat. No more was heard from the applicant until 28 April 1989, on which date she sent the Commission a letter setting out in detail the complaints raised in December 1982 and including the relevant documents. On 30 June 1989 she sent the Commission a duly completed and signed application form.

The Commission recalls that, according to its established practice, it considers the date of introduction of an application to be the date of the applicant's first letter indicating his intention to lodge an application and giving some indication of the nature of the complaints he wishes to raise. However, where a substantial interval follows before the applicant submits further information regarding his proposed application, the Commission examines the particular circumstances of the case in order to decide what date should be regarded as the date of introduction of the application, interrupting the running of time for the purpose of the six month limit laid down by Article 26 of the Convention (cf. No. 4429/70, Dec. 12 71, Collection 37 p. 109).

The Commission considers that the purpose of the six month rule is to maintain reasonable legal certainty and ensure that cases raising issues under the Convention are examined within a reasonable time. It ought also to prevent the authorities and other persons concerned from being kept in a state of uncertainty for a long period of time. Lastly, the rule is designed to facilitate establishment of the facts of the case, otherwise with the passage of time, this would become more and more difficult, and a fair examination of the issue raised under the Convention would thus become problematic.

Admittedly, however, the express obligation laid down in Article 26 of the Convention concerns only the introduction of an application, but the Commission has hitherto shown generosity in this respect by accepting that the date of introduction should be held to be the date on which the first letter setting out the complaint is submitted, without imposing any other restrictions.

Nevertheless, it would be contrary to the spirit and purpose of the six month rule laid down in Article 26 of the Convention to accept that by means of an initial letter an applicant could set in motion the procedure provided for in Article 25 of the Convention only to remain inactive thereafter for an unlimited and unexplained period of time. The Commission has always rejected applications submitted more than six months after the date of the final decision when the running of time has not been interrupted by any particular circumstance. It considers that it would be inconsistent with the object and purpose of the six month rule to deviate from this practice when the application has actually been introduced, in accordance with Article 25 of the Convention, within six months of the final decision but has not been pursued thereafter (No. 10626/83, Dec. 7 5 85, D.R. 42 p. 205).

Delays on the applicant's part in pursuing the application are acceptable only in so far as they are based on the particular circumstances of the case. In the present case, however, the Commission recalls that, according to its case law, a procedure directed towards the reopening of a case or a retrial of its merits is not normally a remedy which need be exhausted and which can be taken into account for the purposes of the six month rule (cf No 7805/77, Dec 5 5 79, D R 16 p 68). Consequently, the application for a retrial concerning the judgment of 19 May 1982, lodged by the applicant on 13 June 1984, cannot be taken into consideration. It is thus apparent that more than six years elapsed between the final decision regarding annulment of the legacy in favour of the applicant, i.e. the Court of Cassation's judgment of 3 March 1983, and the applicant's letter indicating her intention to resume the application.

Accordingly, the Commission considers that in this case the date of introduction of the application must be held to be 28 April 1989, the date of the applicant's first letter to the Commission after exhaustion of domestic remedies, and not 12 December 1982, the date of her previous letter.

It follows that the application must be rejected, pursuant to Article 27 para 3 of the Convention.

For these reasons, unanimously, the Commission

**DECLARES THE APPLICATION INADMISSIBLE**