



## Difference in treatment between persons born in France before and after Algerian independence to parents born in French Algeria: not discriminatory under Article 14 of the Convention

In today's Chamber judgment<sup>1</sup> in the case of [Zeggai v. France](#) (application no. 12456/19) the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 14 (prohibition of discrimination) of the European Convention on Human Rights taken together with Article 8 (right to respect for private and family life).**

The case concerned the rejection of the applicant's request for a certificate of French nationality. He was born in France, before Algerian independence, to parents who at the time were still French nationals. He has lived continuously in France and his brothers and sisters, who were born after Algerian independence, have acquired French nationality. He had previously held a French identity card and voter card, issued to him in error by the French authorities. He complained before the Court that he had been subjected to discrimination prohibited by Article 14.

The Court noted that the applicants' parents, who were born in French Algeria and fell under the local civil status, had not made use of the possibility of being recognised as French nationals by signing a declaration of recognition. It saw no reason to call into question the legitimacy of the distinction made between the minor children of individuals who fell under the Algerian local civil status depending on the date of their birth, i.e. before or after Algeria gained independence. It found that this distinction, at the time, had been appropriate to the legitimate aim pursued, namely to ensure that minor children should automatically have the same status as their parents in respect of French nationality, bearing in mind that the question whether their parents remained French nationals had arisen precisely on account of, and in the context of, Algerian independence.

The Court further observed that the difference in treatment between the applicant and his siblings did not relate to the principle of access to French nationality but to the avenues available for such access. While pointing out that the respondent State had made an error in issuing an identity card and voting card to an individual who no longer had French nationality, it found that this matter had no bearing on the question before the Court as to whether the difference in treatment complained of by the applicant had been discriminatory.

Having regard to the broad margin of appreciation afforded to the respondent State, the Court accepted that the measures adopted had been proportionate to the legitimate aim pursued. It concluded that the difference in treatment complained of by the applicant, in the enjoyment of his right to respect for his private life, had thus been based on an objective and reasonable justification.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

### Principal facts

The applicant, Mohamed Zeggai, was born in 1956 and lives in Le Havre.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

Mr Zeggai was born in France, where he has been living since his birth. His parents were born in 1926 and 1936 in French Algeria and had French nationality by birth.

Until the date of Algeria's independence, 5 July 1962, all persons born in the French territory of Algeria had French nationality. Almost the entire population had a civil status under local law (Islamic law). Those who had made a specific application to that effect to a court were accorded ordinary civil status under French law (French Civil Code).

Pursuant to Ordinance no. 62-825 of 21 July 1962 and Law no. 66-945 of 20 December 1966 amending that Ordinance, individuals who had French civil status and were resident in Algeria on the date of the official announcement of the results of the self-determination vote retained their French nationality, irrespective of their situation with regard to Algerian nationality. Individuals from Algeria with local civil status, and their children, were offered the possibility, in France, of obtaining recognition of French nationality by signing a declaration to that effect. That option remained open to them until 23 March 1967.

Mr Zeggai obtained a French national identity card and a voter's card in 2005.

On 13 December 2011 the registrar of the District Court of Le Havre refused his request for a certificate of French nationality.

On 20 November 2012 the Minister of Justice, with whom Mr Zeggai had lodged an administrative appeal, confirmed that refusal and suggested that he apply to the Minister of the Interior for reinstatement of his French nationality by decree.

On 31 July 2012 Mr Zeggai again applied for a certificate of French nationality on the basis of having acquired French nationality by birth and his residence in France. He was again refused the certificate on the ground that Article 44 of the French Nationality Code did not apply to him since, firstly, he had not been born to foreign parents and, secondly, he fell within the special provisions of Ordinance no. 62-825 of 21 July 1962.

On 18 February 2014 Mr Zeggai brought proceedings against the public prosecutor in the Lille *tribunal de grande instance* to claim French nationality. In a judgment of 3 November 2015 the court declared his application admissible and dismissed it. Mr Zeggai appealed to the Douai Court of Appeal. In a judgment of 15 December 2016 the Court of Appeal upheld the judgment of 3 November 2015.

Mr Zeggai appealed on points of law against the judgment of 15 December 2016 and the Court of Cassation dismissed the appeal in a judgment of 5 September 2018.

After being approached by the applicant, the Minister of the Interior reminded him in a letter of 10 November 2020 that he had the possibility of requesting his reinstatement as a French national, indicating that the Government had, in an instruction of 25 October 2016, asked prefects to pay particular attention to the examination of requests made by individuals in his situation. Similarly, the Minister of Justice, whom the applicant had also approached, reminded him of that possibility in a letter of 1 December 2020.

## Complaints, procedure and composition of the Court

Relying on Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life), the applicant submitted in particular that he had been a victim of discrimination between individuals born in France to French-born parents before Algerian independence and their siblings born in France to French-born parents after Algerian independence.

The application was lodged with the European Court of Human Rights on 4 March 2019.

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

Síofra O’Leary (Ireland), *President*,  
Lado Chanturia (Georgia),  
Ivana Jelić (Montenegro),  
Arnfinn Bårdsen (Norway),  
Mattias Guyomar (France),  
Kateřina Šimáčková (the Czech Republic),  
Mykola Gnatovskyy (Ukraine),

and also Martina Keller, *Deputy Section Registrar*.

## Decision of the Court

### [Article 14 taken together with Article 8](#)

The Court noted that the difference in treatment complained of by the applicant concerned individuals born in France whose parents had been born French on the French territory of Algeria. The parents in question had fallen under the local civil status and had lost French nationality after Algeria’s independence because they had not signed a declaration of recognition of French nationality, and their children had thus been treated differently depending on whether they had been born before or after independence. The differentiation complained of by the applicant therefore related to the circumstances of birth and, more specifically, to the date of birth.

Apart from the fact that he had been born before Algeria’s independence, whereas his brothers and sisters had been born after that date, when their parents no longer had French nationality, the applicant was in a situation similar to theirs as regards the circumstances of his birth: they were all born in mainland France to the same parents, who had been born French on the French territory of Algeria. The similarities between the applicant’s situation and that of his brothers and sisters thus appeared to prevail over any differences.

As regards the aim of the difference in treatment between the applicant and his brothers and sisters, it could be seen from the Government’s observations that, in the context of Algeria’s accession to independence, the policy had sought to maintain family unity at the time of the transfer of sovereignty by ensuring that minor children automatically adopted their parents’ status as regards French nationality. France had decided at that time, within its sovereign discretion, to leave to persons who had local civil status, and who were therefore eligible for Algerian nationality at the time of Algeria’s independence, the choice whether or not to retain French nationality. In addition, considerations of legal certainty justified the temporary nature of the mechanism introduced in 1962.

The Court saw no reason to call into question the legitimacy of the distinction made between the minor children of individuals who fell under the Algerian local civil status depending on the date of the child’s birth, i.e. before or after Algeria gained independence. It found that this distinction, at the time, had been appropriate to the legitimate aim pursued, namely to ensure that minor children should automatically have the same status as their parents in respect of French nationality, bearing in mind that the question whether their parents remained French nationals had arisen precisely on account of, and in the context of, Algerian independence.

As regards the impact on the applicant’s own situation, French law offered him various avenues through which he could recover his French nationality: by a declaration demonstrating enjoyment of French civil status (*possession d’état de Français*), by naturalisation, and by reinstatement as a French national. The Court noted in particular that the third of these options, to which the Minister

of Justice, the Minister of the Interior and the Douai Court of Appeal had drawn the applicant's attention, appeared to be particularly tailored to his situation.

The Court further noted that, in a memorandum of 25 October 2016, the Minister of the Interior had drawn the attention of prefects to the handling of applications for reinstatement of French nationality lodged by persons who, like the applicant, were born in France before 1 January 1963 to parents who had been born French on the French territory of Algeria, falling under local civil status, and who had lost French nationality as they had failed to sign a declaration of recognition of French nationality before 22 March 1967.

Having regard to the documents in the case file, in particular the 2016 memorandum by the Minister of the Interior and the Government's observations, the Court, noting that such proceedings would not be declared out of time, did not doubt that, if the applicant decided to apply for his reinstatement as a French national, as suggested by the Minister of Justice, the Minister of the Interior and the Douai Court of Appeal, the national authorities would process his application promptly.

The Court further observed that the difference in treatment between the applicant and his brothers and sisters did not relate to the principle of access to French nationality but to the avenues available for such access, thus significantly nuancing its impact on his right to respect for his private life. While pointing out that the respondent State had made a regrettable error in issuing an identity card and voter's card to an individual who no longer had French nationality, it found that this matter had no bearing on the question before the Court as to whether the difference in treatment complained of by the applicant had been discriminatory, regardless of the consequences of that error for the applicant's right to respect for his private life.

Having regard to the broad margin of appreciation afforded to the respondent State, the Court accepted that the measures adopted had been proportionate to the legitimate aim pursued. The difference in treatment complained of by the applicant, in the enjoyment of his right to respect for his private life, had thus been based on an objective and reasonable justification.

There had therefore been no violation of Article 14 taken in conjunction with Article 8 of the Convention.

*The judgment is available only in French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.