

(TRANSLATION)

THE FACTS

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

The applicants, who are Belgian nationals and reside in Belgium, at the same address (1702 Mollem, Ceuppenrij 24), are the following:

1. Mathieu Jolie, represented by his mother, Chantal Jolie, born on 27 July 1979 (the first applicant);
2. Chantal Jolie (the second applicant);
3. Etienne Lebrun (the third applicant).

They are represented before the Commission by Mr. Johan Vanden Eynde of the Brussels Bar.

The second applicant had been married to Mr. G.W. since 18 January 1975, when she gave birth to the first applicant on 27 July 1979; at that time, she had been separated from Mr. G.W. since the first half of 1978.

Considering that he was not the first applicant's biological father, Mr. G.W. brought an action disclaiming paternity before the competent court. This action was declared well-founded by the 9th Division of the Brussels District Court on 12 December 1979.

As a result of this decision, the first applicant became a child of an adulterous relationship ("enfant adultérin") in Belgian law.

The second applicant had not sought a judicial settlement when she separated from Mr. G.W. It was not until 21 May 1979 (first record of court proceedings in connection with divorce by mutual consent — Article 1289 of the Belgian Judicial Code) that she instituted divorce proceedings.

The third applicant states that he is the biological father of the first applicant, and wishes to have his biological paternity recognised in law.

Article 335 of the Belgian Civil Code provides, however, that:

"Children of an adulterous relationship ('enfants adultérins') may be recognised only in the cases and in the manner prescribed in Article 331. Such children shall have the status of ordinary illegitimate children."

Article 331 states that:

"Children of an adulterous relationship ('enfants adultérins') may be legitimised only with the consent of a court, and only when the previous marriage has been terminated by divorce proceedings or judicial separation, and the child

has been born 300 days after the record provided for in Article 1258 of the Judicial Code, or the declaration provided for in Article 1289 of the same Code, or the beginning of *de facto* separation, if divorce has been granted under Article 1232 of the present Code.”

Since the first applicant was born less than 300 days after the record provided for in Article 1258 of the Belgian Judicial Code or the declaration provided for in Article 1289 of the same Code (1), the third applicant is unable to establish his paternity in law. The law thus prohibits the first applicant from legally belonging to his biological and social family, based on a non-marital union.

The three applicants and the second child of the second and third applicants form a family in the biological and social sense of the term. The third applicant is entitled to recognise the second child. His doing so would, however, create a discrimination between his two children, since both would belong to the same biological and social family based on a non-marital union, but only one would belong legally to the third applicant's family.

COMPLAINTS

The applicants allege a violation of Articles 8, 9, 12 and 14 of the Convention, taken alone and in conjunction with each other.

1. Related persons living under one roof, and specifically a father, mother and children, constitute a family in the accepted sense of the term. According to this definition, the three applicants form a family based on consanguinity and thus on a non-marital union.

The term “kinship” covers all those social relationships resulting from consanguinity or marriage (J.P. Colleyn, “Eléments d’anthropologie sociale et culturelle”, Brussels, 1979, Ed. U.L.B., p. 63).

(1) *Article 1258 of the Belgian Judicial Code* (divorce for a specified reason). On the appointed day, the judge shall make to the two spouses, if they both appear, or to the petitioner, if only the petitioner appears, such representations as he considers likely to effect a reconciliation.

In the event of his failing to effect a reconciliation, he shall draw up a record, and shall order that the petition and evidence be sent to the Public Prosecutor, and the case referred to the court.

When appropriate, the judge shall enter in the said record the agreement of the parties to provisional measures concerning the person, maintenance and property of the children referred to in Article 1254. If he sees fit, he shall officially endorse this agreement.

Article 1289 of the Belgian Judicial Code (divorce by mutual consent). The spouses shall appear together in person before the President of the District Court of their choice or the judge exercising those functions. They shall make before him a formal statement of their intentions [...].

As amended by L. 1 July 1972, Article 3.

The applicants' right to found a family is guaranteed by Article 12 of the Convention; this provision cannot be taken as restricting the right to found a family to the establishment of a family within a marriage.

2. The founding of a family depends on the will of its members and on their religious, philosophical or moral convictions. Article 9 of the Convention guarantees everyone the right to manifest his convictions in his daily life without unjustified discrimination.

Taken together, Articles 9 and 12 of the Convention indicate that individuals are entitled to form families in accordance with their convictions and without being subjected to discrimination.

The fact that individuals are entitled to found families outside marriage in accordance with their convictions implies that filiation arising from such a family must be recognised in law as being equal to filiation stemming from marriage. The making of an unfair distinction between filiation arising from a family based on non-marital union and filiation arising from marriage violates not only Articles 9 and 12, but also Article 8.

3. Article 8 of the Convention guarantees everyone the right to respect for his private and family life. No public authority may interfere unjustifiably with the private life of the individual.

The denial to filiation arising from non-marital union of the rights accorded to filiation arising from marriage constitutes unjustified interference by a public authority in private life. Belgian law obliges parents to choose between living in accordance with their religious, philosophical or moral convictions (and possibly being unable to secure legal status for their children in consequence) and agreeing to give their union the legal form dictated by the State, which may well be incompatible with those convictions.

4. By creating this distinction, Belgian law violates Article 14 of the Convention, since it exposes children born into families based on a non-marital union to unjustified discrimination based on birth. The system introduced by Articles 331 and 335 of the Belgian Civil Code is even more serious, however, since the discrimination it creates in principle prevents the biological father from recognising his child when the mother is still married at the time of the child's birth and her husband is not the child's biological father.

The Convention guarantees the right to respect for family life, and this protection extends to families based on a non-marital union. It obliges States to introduce protective machinery making it possible for children to be integrated into their families from birth. This means that Articles 331 and 335 of the Belgian Civil Code are incompatible with the Convention.

Under Belgian law, the first applicant, who was born when his mother was still married, cannot be recognised by the third applicant. In other words, Belgian law creates a situation in which a child is necessarily and legally unrelated to his biological father.

Under Articles 8 and 14 of the Convention, the child of an adulterous relationship ("enfant adultérin") has the fundamental right to have his actual family ties formally recognised.

Recognition of the first applicant by the third does not damage the legitimate interests of any third party and does not disturb public order, since it simply reconciles biological and legal reality.

Articles 331 and 335 of the Belgian Civil Code introduce discrimination for which there is no objective and reasonable justification.

In summary, the system established by Articles 331 and 335 of the Belgian Civil Code not only prevents the first applicant from establishing his biological filiation, but also prevents all three applicants from founding a family in accordance with their convictions, based on a non-marital union and recognised as being equal to a family based on marriage.

This means, as far as the first applicant is concerned, that Articles 331 and 335 of the Belgian Civil Code create discrimination based principally on birth, which cannot be objectively and reasonably justified, since the third applicant is unable, in Belgian law, to lead a normal and legally recognised family life with the third applicant.

THE LAW

1. The applicants claim that certain provisions of the Belgian Civil Code governing the status of children of adulterous relationships ("enfants adultérins"), particularly those relating to the establishment of maternal and paternal filiation and the legal extent of the family of such children, constitute a "*capitis diminutio*" in respect of Mathieu Jolie (the first applicant).

They further maintain that these provisions represent unjustified interference with the private and family life of the parents (the second and third applicants).

They also claim that both Mathieu Jolie and his parents are the victims of discrimination resulting from the provisions complained of.

Finally, they point out that the right of the second and third applicants to found a family in accordance with their own wishes and their religious, philosophical and moral convictions has not been respected in this case, and that they are also the victims of discrimination in this respect.

In connection with the above, they allege a violation of Article 8, taken alone, of Articles 14 and 8 taken in conjunction, and of Articles 9, 12 and 14 of the Convention in conjunction with one another.

2. Article 8 of the Convention states that :

“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.”

The Commission considers that the right to respect for family life is not confined to “legitimate” families. It refers in this connection to its own case-law and to the judgment given by the European Court of Human Rights in the *Marckx* case (Eur. Court H.R., *Marckx* judgment of 13 June 1979, Series A no. 31).

It also recalls that, in order to ascertain whether in a given case it is appropriate to speak of “family life” within the meaning of Article 8, it has considered not only whether the persons concerned were related but also whether it was in fact possible to point to such a link as can “be considered to establish family life within the meaning of Article 8” (No. 6833/74, Dec. 29.9.75, D.R. 3 p. 112).

In the present case, the Commission finds that between the applicants there exists not only a family relationship but also a link which can be considered to establish family life within the meaning of Article 8 of the Convention. It is sufficient to note in this respect that Mathieu Jolie lives with his parents, Chantal Jolie and Etienne Lebrun, who are bringing him up, as they are the second child of this family in the biological sense of the term.

The Commission finds that the application raises a number of complex problems, and particularly the following :

a) Do the provisions of Belgian law complained of constitute interference with the right of the child of an adulterous relationship (“enfant adultérin”) to respect for his private and family life? The Commission notes that the provisions in question are Articles 331 and 335 of the Civil Code, and Articles 1258 and 1289 of the Judicial Code (see, for the content of these Articles, the part of this decision setting out “THE FACTS”).

b) Does the interference allegedly suffered by the children of adulterous relationships (“enfants adultérins”) also constitute interference with the private and/or family life of the mother? The same question arises with regard to the biological father.

c) Assuming that such interference by the Belgian legislator with the applicants' private and/or family life is proved, is it justified under Article 8 para. 2 of the Convention?

d) Does Belgian law also constitute a violation of Article 14 of the Convention, taken in conjunction with Article 8, with regard to the three applicants?

e) Finally, does the legislation complained of violate the rights guaranteed by Articles 9, 12 and 14 of the Convention, taken with one another?

The Commission notes that Mathieu Jolie, having been born less than 300 days after the record provided for in Article 1258 of the Judicial Code, cannot belong in law to his biological and social family, based on a non-marital union. Moreover, Belgian law prohibits the biological father, in this case, from establishing his paternity in law.

As for the mother's situation, while registration of the court decision on the application disclaiming paternity has turned Mathieu Jolie's "legitimate" filiation into a filiation of a child of an adulterous relationship ("filiation adultérine"), his maternal filiation is still established. As far as his mother is concerned, he has been integrated into his family from birth. In fact, as soon the child is declared the child of an adulterous relationship ("enfant adultérin"), it is the law on illegitimate descent which applies, except in respect of voluntary recognition by the mother, which is not required in this case.

In the applicants' view, to deny to filiation arising from a non-marital union the rights accorded to "legitimate" filiation constitutes unjustified interference by a public authority with their private and family life, violating Article 8, taken alone, and also gives rise to discrimination, in violation of Article 14 taken in conjunction with Article 8 of the Convention.

In the Government's view, the situation of the child of an adulterous relationship ("enfant adultérin") and his mother, particularly in respect of the legal extent of the family, raises problems identical to those addressed by the European Court of Human Rights in the Marckx judgment, in which it found that there had been a violation of Article 8, taken alone and in conjunction with Article 14 of the Convention, with regard to the child and the mother. The Government consider the application admissible in this respect.

As for the establishment of maternal and paternal filiation, the Government contest the applicants' arguments. They point out that the child's integration into his family from birth is established in respect of his mother, but cannot in any case be established in respect of his father.

The Government point out that, while the Court insists in its judgment that family life must in fact be respected, it leaves States to decide how this objective is to be achieved. This suggests that actual respect for family life does not necessarily involve recognition of the biological link between the father and the child. The right recognised in Article 8 of the Convention is absolute only in respect of the necessity

of integrating the child into his family from birth. Otherwise, the law may impose restrictions for different purposes, one of them being protection of the rights and freedoms of others. It is indeed for this reason that recognition by the father of a child of an adulterous relationship ("enfant adultérin") as "illegitimate" cannot be a merely voluntary operation, but must be subject to supervision by a court. The whole situation of children of adulterous relationships is a delicate one, since numerous interests are involved. This is why the law has established, in Articles 331 and 335 of the Civil Code, a reasonable and necessary system to protect the rights of the spouse and legitimate children and maintain a certain order in society.

The Government conclude that this interference is justified within the meaning of Article 8 para. 2 of the Convention, since the aims pursued by the authors of the Belgian legislation complained of are motivated by considerations of a moral nature. They are reasonable and objective.

The Commission must therefore decide whether such interference as there may be is necessary in a democratic society, for the protection of morals, order and the freedoms of others.

3. Finally, the applicants argue that Articles 9, 12 and 14 of the Convention together indicate that individuals are entitled to establish families in accordance with their convictions, without being subjected to discrimination. The right to found a family outside marriage, in accordance with their convictions, implies that filiation arising from such a family must be recognised in law as being equal to filiation stemming from marriage.

The Government contest this argument, pointing out that Article 12 of the Convention states that: "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."

It is therefore clear that the right to marry, while absolute in principle, may be regulated in practice by national legislation. The Government argue that this is necessary for reasons both of public order and of legal security. Moreover, marriage is not regarded in the Convention merely as the expression of an intention, conscience or religion, but also as a social institution.

4. The Commission considers, in the light of a preliminary examination of the parties' arguments, its own case-law and that of the Court, that the above complaints raise problems of interpretation sufficiently complex and important to necessitate examination of the merits of the case. It follows that the application cannot 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 THE APPLICATION ADMISSIBLE.