



Maltese courts' refusal to grant citizenship to boy born out of wedlock to Maltese father and British mother was discriminatory

In today's Chamber judgment in the case [Genovese v. Malta](#) (application no. 53124/09), which is not final¹, the European Court of Human Rights held, by a majority, that there had been:

A violation of Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned the complaint by a British citizen, whose father is Maltese, that he was prevented from obtaining Maltese citizenship because he had been born out of wedlock.

Principal facts

The applicant, Ben Alexander Genovese, is a British national and lives in Hamilton (UK). He was born out of wedlock in the United Kingdom in 1996 to a British mother and a Maltese father (Mr G.).

Informed by the Maltese authorities that her son could only be granted Maltese citizenship if his Maltese father recognised him on his birth certificate, Mr Genovese's mother applied to the courts in Scotland to have Mr G.'s paternity declared. The courts declared Mr G. the biological father of her son and his birth certificate was amended accordingly. The Maltese courts later also confirmed Mr G.'s biological paternity and ordered him to pay maintenance. An application by Mr Genovese's mother for her son to be granted Maltese citizenship was nonetheless rejected on the basis of the relevant sections of the Maltese Citizenship Act, which stated that children born out of wedlock were only eligible for Maltese citizenship if their mother was Maltese.

In January 2006, on application by Mr Genovese's mother, the Maltese Civil Court, in its constitutional jurisdiction, found that those sections of the Maltese Citizenship Act were discriminatory and therefore in violation of the Constitution. In November 2008, the court further held that because of the applicable law Mr Genovese had suffered discrimination on the ground of birth, his illegitimate status, and the sex of his Maltese parent, in violation of the European Convention on Human Rights. However, in March 2009, the Constitutional Court reversed the judgment, holding in particular that the right to citizenship was not a substantive Convention right and that granting or denying citizenship would not affect Mr Genovese's family life, as his father refused to have any contact with him.

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

Complaints, procedure and composition of the Court

Mr Genovese complained that Maltese law prevented him from obtaining Maltese citizenship and thus discriminated against him, in violation of Article 14 in conjunction with Article 8.

The application was lodged with the European Court of Human Rights on 24 September 2009.

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

Nicolas **Bratza** (the United Kingdom), *PRESIDENT*,
Lech **Garlicki** (Poland),
Ljiljana **Mijović** (Bosnia and Herzegovina),
Päivi **Hirvelä** (Finland),
George **Nicolaou** (Cyprus),
Ledi **Bianku** (Albania), *JUDGES*,
Geoffrey **Valenzia** (Malta), *AD HOC JUDGE*,

and also Lawrence **Early**, *SECTION REGISTRAR*.

Decision of the Court

[Article 14 in conjunction with Article 8](#)

The Maltese Government submitted that in 2007 the domestic law had been amended; now making Mr Genovese eligible for citizenship. The Court pointed out, however, that the complaint related to Mr Genovese's eligibility for citizenship prior to those amendments, which had been enacted more than ten years after the original application for citizenship.

The Court underlined that Article 14 in conjunction with Article 8 was applicable in Mr Genovese's case. While it was true that the denial of citizenship could not be said to have acted as an impediment to establishing family life – given that his father did not wish to build or maintain a relationship with him – its impact on Mr Genovese's private life, a concept which was wide enough to embrace aspects of a person's social identity, was such as to bring it within the general scope and ambit of Article 8.

The Convention had to be interpreted in the light of present-day conditions. The question of equality between children born in and out of wedlock was given importance in the member States of the Council of Europe, demonstrated in particular by the fact that the 1975 European Convention on the Legal Status of Children Born out of Wedlock was today in force in more than 20 of those States. Thus, very weighty reasons would have to be advanced before what appeared to be an arbitrary difference in treatment on the ground of birth out of wedlock could be regarded as compatible with Article 14 of the European Convention on Human Rights.

Mr Genovese was in an analogous situation to other children with a father of Maltese nationality and a mother of foreign nationality. The only distinguishing factor, which had rendered him ineligible to acquire citizenship, was the fact that he had been born out of wedlock. The Court was not convinced by the Government's argument that children born in wedlock had a link with their parents resulting from their parents' marriage, which did not exist in cases of children born out of wedlock. It was precisely a distinction in treatment based on such a link which Article 14 prohibited, unless it was otherwise objectively justified.

Furthermore, the Court could not accept the argument that, while the mother was always certain, a father was not. In Mr Genovese's case, his father was known and was registered in his birth certificate, yet the distinction arising from the Citizenship Act had persisted.

No reasonable or objective grounds had been given to to justify that difference in treatment. There had accordingly been a violation of Article 14 in conjunction with Article 8.

Article 41

Mr Genovese had not submitted any claim for just satisfaction under Article 41 of the Convention.

Separate opinion

Judge Valenzia expressed a dissenting opinion, which is annexed to the judgment.

The judgment is available only in English.

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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.