EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
issued by the Registrar of the Court

ECHR 042 (2013)
07.02.2013

Refusal to grant inheritance rights to a child "born of adultery" entitled to claim such rights under a new law was unjustified

In today's Grand Chamber judgment in the case of **Fabris v. France** (application no. 16574/08), which is final[1], the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 1 of Protocol No. 1 (protection of property) of the European Convention on Human Rights

The applicant complained that he had been unable to benefit from a law introduced in 2001 (Law of 3 December 2001) granting children "born of adultery" identical inheritance rights to those of legitimate children, passed following delivery of the Court's judgment in *Mazurek v. France*[2] of 1 February 2000.

The Court held that the legitimate aim of protecting the inheritance rights of Mr Fabris's half-brother and half-sister did not outweigh the applicant's claim to a share of his mother's estate and that the difference of treatment in his regard was discriminatory, as it had no objective and reasonable justification.

Principal facts

The applicant, Henry Fabris, is a French national who was born in 1943 and lives in Orleans (France). At the time of his conception his mother was married to Mr M., with whom she had had two children. In 1970 Mr and Mrs M. signed an *inter vivos* deed of division (a legal instrument by which a person divides his or her property between all his or her heirs) dividing their property between their two legitimate children.

In 1983 – when he was 40 years old – Mr Fabris was judicially declared the "illegitimate" child of Mrs M. Following his mother's death in 1994, he sought an abatement of the *inter vivos* division, claiming a reserved portion of the estate equal to that of the donees, namely, his mother's legitimate children. The *tribunal de grande instance* found in his favour in 2004 on the basis of Articles 8 (right to respect for private and family life) and 14 (prohibition of discrimination) of the European Convention on Human Rights.

On appeal by the children born of Mrs M.'s marriage, that judgment was set aside by the Montpellier Court of Appeal on 14 February 2006 on the ground that, under the Law of 1972, *inter vivos* gifts granted prior to the date on which that Law came into force could not be challenged, which was the case here as the deed of *inter vivos* division had been signed in 1970. In the Court of Appeal's opinion, there was objective and reasonable justification for that rule in the light of the legitimate aim pursued, namely, ensuring peaceful family relations by securing rights acquired in that context - sometimes long-standing ones. An appeal by the applicant on points of law was dismissed in 2007 by the Court of Cassation, which observed that, under the transitional provisions of the Law of 3

1 Grand Chamber judgments are final (Article 44 of the Convention).
All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

2 Mazurek v. France, 01.02.2000. In this judgment, the Court found a violation of Article 1 of Protocol No. 1 combined with Article 14 on the ground that the applicant had been penalised as regards the division of his mother's estate because he was the child of an adulterous union.

December 2001, the new inheritance rights of children "born of adultery" were applicable only in respect of successions that were already open and not yet divided before 4 December 2001. The court found that in the present case division of the estate had been triggered by the applicant's mother's death in 1994, that is, before 4 December 2001.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 1 April 2008. Relying on Article 14 (prohibition of discrimination), taken in conjunction with Article 1 of Protocol No. 1 (protection of property) and Article 8 (right to respect for private and family life) of the Convention, Mr Fabris complained that he had been unable to assert his inheritance rights. In its Chamber judgment of 21 July 2011, the Court held that there had been no violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1. It considered that the interpretation by the French courts of the Laws of 1972 and 2001 had pursued the legitimate aim of guaranteeing the principle of legal certainty and that the difference of treatment between Mr Fabris and his mother's legitimate children had been proportionate to that aim. The Court accordingly held that a proper balance had been struck between the long-established rights of Mr and Mrs M.'s legitimate children and the pecuniary interests of Mr Fabris. Having regard to that conclusion, it did not examine separately the complaint based on Article 14 taken in conjunction with Article 8.

On 6 September 2011 the applicant requested referral of the case to the Grand Chamber in accordance with Article 43 of the Convention (referral to the Grand Chamber[3]). On 28 November 2011 the panel of the Grand Chamber accepted the request. A hearing was held on 4 April 2012.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Josep **Casadevall** (Andorra), *President*,
Françoise **Tulkens** (Belgium),
Nina **Vajić** (Croatia),
Lech **Garlicki** (Poland),
Karel **Jungwiert** (Czech Republic),
Elisabeth **Steiner** (Austria),
Alvina **Gyulumyan** (Armenia),
Egbert **Myjer** (Netherlands),
Dragoljub **Popović** (Serbia),
George **Nicolaou** (Cyprus),
András **Sajó** (Hungary),
Ledi **Bianku** (Albania),
Nona **Tsotsoria** (Georgia),
Işıl **Karakaş** (Turkey),
Guido **Raimondi** (Italy),
Paulo **Pinto de Albuquerque** (Portugal),
André **Potocki** (France),

and also Johan **Callewaert**, *Deputy Grand Chamber Registrar.*

[3] Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise, Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

Decision of the Court

Article 14 taken in conjunction with Article 1 of Protocol No. 1

The Court reiterated first of all that very weighty reasons had to be advanced before a distinction on grounds of birth outside marriage could be regarded as compatible with the Convention. The difference in treatment between the applicant and his half-brother and half-sister derived from the 2001 Law, which restricted application of the new inheritance rights of children "born of adultery" to successions that had not given rise to division before 4 December 2001 (the Court of Cassation had considered in the case of Mr Fabris that division had taken place in 1994). The only reason for the difference in treatment was the fact that the applicant had been born outside marriage.

The Court, reiterating that its role was to determine whether the manner in which the domestic legislation had been applied was in conformity with the Convention, examined to what extent the difference of treatment in question suffered by the applicant pursued a legitimate aim. It noted that, by reforming the rules of inheritance law following the judgment in the case of *Mazurek*, France had brought its law into line with the Convention principle of non-discrimination, and it welcomed that measure. It also observed that the protection of acquired rights could serve the interests of legal certainty. The Government had indeed argued that the concern not to undermine rights acquired by heirs (Mr Fabris's half-brother and half-sister in this case) justified restricting the retroactive effect of the 2001 Law to successions that had not given rise to division by that date. In the Court's view, that was a legitimate aim capable of justifying the difference in treatment in the present case.

The Court next sought to determine whether the difference in treatment was proportionate to that legitimate aim. It considered that the applicant's half-brother and half-sister knew – or should have known – that their rights were liable to be challenged. They should have known that their half-brother had until 1999 to claim his share in the estate and that the action for abatement brought by Mr Fabris was pending before the national courts at the time of delivery of the judgment in *Mazurek* and publication of the Law of 2001 incorporating the principles affirmed in this judgment into French law. Lastly, the applicant was not a descendant whose existence had been unknown to them as he had been recognised as their mother's "illegitimate" son in a judgment delivered in 1983. Accordingly, the Court considered that the legitimate aim of protecting the inheritance rights of the applicant's half-brother and half-sister was not sufficiently weighty to override the claim by the applicant to a share in his mother's estate.

The Court also noted that, even in the eyes of the national authorities, the expectations of heirs who were the beneficiaries of an *inter vivos* division were not to be protected in all circumstances, since under French law a legitimate child, born after an *inter vivos* division or excluded from a division, would not have had his or her claim declared inadmissible. The Court questioned, moreover, the decision of the national court – years after the *Marckx*[4] and *Mazurek* judgments – to apply the principle of protection of legal certainty differently according to whether it was being asserted against a legitimate child or a child "born of adultery". It noted, lastly, that the Court of Cassation had not addressed Mr Fabris's ground of appeal relating to an infringement of the principle of non-discrimination.

The Court concluded that there was no reasonable relationship of proportionality between the means employed and the legitimate aim pursued. There had therefore been no objective and reasonable justification for the difference in treatment regarding the

[4] Marckx v. Belgium, 13.06.1979.
See Factsheet on Children's rights (page 3).

applicant, in violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

Having regard to that conclusion, the Court considered that it was not necessary to examine separately the applicant's complaint under Article 14 taken in conjunction with Article 8.

Just satisfaction (Article 41)

The Court found that the question of just satisfaction was not ready for decision and reserved it for decision at a later stage.

Separate opinions

Judge Popović expressed a concurring opinion, joined by Judge Gyulumyan. Judge Pinto de Albuquerque also expressed a concurring opinion.

The judgment is available in English and French.

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