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Children's Rights

Education

Belgian Linguistic Case (nos. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63 and 2126/64)

23.7.1968

The applicants, parents of more than 800 Francophone children, living in certain (mostly Dutch-speaking) parts of Belgium, complained that their children were denied access to an education in French.

The European Court of Human Rights found that, denying certain children access to the French-language schools with a special status in the six communes on the outskirts of Brussels because their parents lived outside those communes was in violation of Article 14 (prohibition of discrimination) of the European Convention on Human Rights and Article 2 of Protocol No. 1 (right to an education). However, the Court also held that the Convention did not guarantee a child the right to state or state-subsidised education in the language of her/his parents. Measures taken included a change in the law.

Timishev. v. Russia (nos. 55762/00 and 55974/00)

13.12.2005

The applicant's children, aged seven and nine, were excluded from a school they had attended for two years because their father, a Chechen, was not registered as a resident of the city where they lived and no longer had a migrant's card, which he had been obliged to surrender in exchange for compensation for property he had lost in Chechnya.

As Russian law did not allow children's access to education to be made conditional on the registration of their parent's place of residence, the Court found a violation of Article 2 of Protocol No. 1. Execution of this judgment is ongoing.

D.H.v. Czech Republic (no. 57325/00)

13.11.2007

The case concerned 18 Roma children, all Czech nationals, who were placed in schools for children with special needs, including those with a mental or social handicap, from 1996-9. The applicants claimed that a two-tier educational system was in place in which the segregation of Roma children into such schools – which followed a simplified curriculum – was quasi-automatic.

The Court noted that, at the relevant time, the majority of children in special schools in the Czech Republic were of Roma origin. Roma children of average/above average intellect were often placed in those schools on the basis of psychological tests which were not adapted to people of their ethnic origin. The Court concluded that the law at that time had a disproportionately prejudicial effect on Roma children, in violation of Article 14 and Article 2 of Protocol No. 1. However, new legislation had abolished the special schools and required ordinary schools to provide both for children with special educational needs and socially disadvantaged children. Execution of this judgment is ongoing.

Sampanis and Others v. Greece (no. 32526/05)

5.6.2008

The Greek authorities failed to enrol in school a group of Greek children of Roma origin – who were receiving no formal education – for an entire academic year. Over 50 children were subsequently placed in special classes in a school annex which was supposed to prepare the pupils concerned for reintegration into mainstream classes.

The Court noted that the Roma children were not suitably tested either initially, to see if they needed to go into the preparatory classes, or later, to see if they had progressed sufficiently to join the main school. It found a violation of Article 2 of Protocol No. 1 and Article 14, concerning both the enrolment procedure and the placement of the children in special classes, as well as Article 13 (right to an effective remedy). Execution of this judgment is ongoing.

Oršuš and Others v. Croatia (no. 15766/03)

16.3.2010

Fifteen Croatians of Roma origin complained that they were victims of racial discrimination in that they were segregated into Roma-only classes and consequently suffered educational, psychological and emotional damage.

The Court observed that only Roma children had been placed in the special classes in the schools concerned. The Government attributed the separation to the pupils' lack of proficiency in Croatian; however, the tests determining their placement in such classes did not focus specifically on language skills, the educational programme subsequently followed did not target language problems and the children's progress was not clearly monitored. The placement of the applicants in Roma-only classes was therefore unjustified, in violation of Article 2 of Protocol No. 1 and Article 14. Execution of this judgment is ongoing.

Horvàth és Vadàzi v. Hungary (no. 2351/06)

09.11.2010

Two children found to have minor intellectual disabilities, and both of Roma origin, were placed in a remedial school class with a teacher without a degree in special educational needs. They complained that the decision to place them in a special class was based on their ethnic origin and therefore discriminatory. They brought unsuccessful legal proceedings.

The Court declared the case inadmissible because: the applicants had not brought a civil claim under section 77 of the Public Education Act; they had not met the requirement to come to the European Court of Human Rights within six months of the final decision by the Hungarian legal authorities concerning one set of proceedings and they had not raised the issue of discrimination in the other.

Ali v. the United Kingdom (no. 40385/06)

11.01.2011

The applicant was excluded from school during a police investigation into a fire at his school, because he had been in the vicinity at the relevant time. He was offered alternative schooling and, after the criminal proceedings against him were discontinued, his parents were invited to a meeting with the school to discuss his reintegration. They failed to attend and also delayed deciding on whether they wanted him to return to the school. His place was given to another child.

The Court noted that the right to education did not necessarily entail the right of access to a particular school or exclude disciplinary measures. The applicant had been excluded as part of a criminal investigation in accordance with the law and only temporarily, with alternative education being offered. His parents had then failed to attend the meeting about his reintegration or to recontact the school in time to prevent his expulsion. There had therefore been no violation of Article 2 of Protocol No. 1.

Inheritance and Affiliation

Marckx v. Belgium (no. 6833/74)

13.6.1979

An unmarried Belgian mother complained that she and her daughter Alexandra were denied rights accorded to married mothers and their children: among other things, she had to recognise her child (or bring legal proceedings) to establish affiliation (married mothers could rely on the birth certificate); recognition restricted her ability to bequeath property to her child and did not create a legal bond between the child and mother's family, her grandmother and aunt. Only by marrying and then adopting Alexandra (or going through a legitimation process) would she have ensured that her daughter had the same rights as a legitimate child.

The Court found violations of Article 8 and 14 regarding both applicants, concerning the establishment of Alexandra's maternal affiliation, the lack of a legal bond with her mother's family and her inheritance rights and her mother's freedom to choose how to dispose of her property. A bill to erase differences in treatment between children of married and unmarried parents was going through the Belgian Parliament at the time of the judgment. Measures taken (law changed).

Inze v. Austria (no. 8695/79)

28.10.1987

The applicant was not legally entitled to inherit his mother's farm when she died intestate because he was born out of wedlock. Although he had worked on the farm until he was 23, his younger half-brother inherited the entire farm. The applicant ultimately received a small section of land from his brother that his mother had wanted to leave to him.

The Court – noting that the applicant had only accepted the settlement because he had had no hope of obtaining more – found that there had been a violation of Article 14 in conjunction with Article 1 of Protocol No. 1. Measures taken.

Mazurek v. France (no. 34406/97)

1.2.2000

The applicant, born of an adulterous relationship, had his entitlement to inherit reduced by half because a legitimated child also had a claim to their mother's estate, according to the law in force at that time (1990).

The Court noted a clear trend in Europe towards the abolition of discrimination in relation to children in the applicant's situation. Such a child could not be reproached for events outside her/his control. There had therefore been a violation of Article 1 of Protocol No. 1 in conjunction with Article 14. Measures taken (law changed).

See also Merger and Cros v. France (no. 68864/01)

22.12.2004

Camp and Bourimi v. the Netherlands (no. 28369/95)

3.10.2000

Eveline Camp and her baby son Sofian had to move out of their family home after Sofian's father Abbi Bourimi died intestate, before recognising Sofian and marrying Ms Camp (as had been his stated intention). Under Dutch law at the time Mr Bourimi's parents and siblings inherited his estate. They then moved into his house. Sofian was later declared legitimate, but as the decision was not retroactive, he was not made his father's heir.

Noting that Mr Bourimi had intended to marry Ms Camp and recognise Sofian, the Court found Sofian's exclusion from his father's inheritance to be disproportionate, in violation of Articles 8 and 14. Measures taken.

Pla and Puncernau v. Andorra (no. 69498/01)

13.7.2004

Antoni, an adopted child, was disinherited and his mother consequently lost her right to the life tenancy of the family estate after the Andorran courts interpreted a clause in a will – stipulating that the heir must be born of a "legitimate and canonical marriage" – as referring only to biological children.

The Court noted that Antoni's parents had a "legitimate and canonical marriage" and there was nothing in the will in question to suggest that adopted children were excluded. The courts' decision amounted to "judicial deprivation of an adopted child's inheritance rights" which was "blatantly inconsistent with the prohibition of discrimination", in violation of Articles 14 & 8. Execution of this judgment is ongoing.

Brauer v. Germany (no. 3545/04)

28.5.2009

The applicant was unable to inherit from her father who had recognised her under a law affecting children born outside marriage before 1 July 1949. The equal inheritance rights available under the law of the former German Democratic Republic (where she had lived for much of her life) did not apply because her father had lived in the Federal Republic of Germany when Germany was unified.

The Court found violations of Articles 8 and 14. Execution of this judgment is ongoing.

Stagno v. Belgium (no. 1062/07)

7.7.2009

Two sisters complained that they were denied access to a court to bring proceedings against their mother for maladministration of their estate because it was impossible for minors to bring such proceedings and, once they had reached majority, the proceedings were time-barred.

The Court held that there had been a violation of Article 6 § 1 (right to a fair hearing). Execution of this judgment is ongoing.

Pending case

Tavel v. Switzerland (41170/07)

The applicant and his mother lost their rights to certain allowances and the family inheritance when she remarried and changed her surname. He relies on Articles 8 and 14.

Personal Identity

Odièvre v. France (no. 42326/98)

13.2.2003

The applicant, who was adopted, found out that she had three biological brothers. Her request for access to information to identify them was rejected because she had been born under a special procedure which allowed mothers to remain anonymous. In addition, she could not inherit from her natural mother.

The Court found that there had been no violation of Articles 8 or 14 in that France had struck a fair balance between the various competing interests at stake: the public interest (the prevention of abortions – especially illegal abortions – and the abandonment of babies); a child's personal development and right to know her/his origins; a mother's right to protect her health by giving birth in appropriate medical circumstances; and, the protection of other members of the various families involved. It would also have been possible for the applicant to request disclosure of her mother's identity with her consent. In addition, the applicant could inherit from her adoptive parents and was not in the same position as her mother's other natural children.

Jäggi v. Switzerland (no. 58757/00)

13.7.2006

The applicant was not allowed to have DNA tests performed on the body of a deceased man whom he believed to be his biological father. He was therefore unable to establish paternity.

The Court found that there had been a violation Article 8; the DNA test was not particularly intrusive, the family had cited no philosophical or religious objections and, if the applicant had not renewed the lease on the deceased man's tomb, his body would already have been exhumed. Measures taken.

Citizenship

Pending case

Genovese v. Malta (no. 53124/09)

Refusal to grant Maltese citizenship to the British applicant – born in Scotland (United Kingdom) out-of-wedlock to a British mother and a Maltese father – on the ground that he is an illegitimate child. A child born in wedlock or to a Maltese mother would have been entitled to Maltese citizenship.

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