

## **ECtHR - Genovese v. Malta**

Maltese authorities denied Maltese nationality to a child on the basis that they were born out of wedlock to a Maltese father and a British mother. Domestic legislation only conferred nationality to children born out of wedlock if the mother was Maltese. The Court rejected the argument advanced by the Maltese Government that this case was justified on the basis that a mother is always certain, whereas a father is not. It concluded that no reasonable grounds were adduced to justify such a difference in the treatment of the applicant and found a violation of Article 14 in conjunction with Article 8 ECHR.

**Case name (in original language) :** Genovese v. Malta, Application no. 53124/09

**Case status:** Decided

**Case number:** 53124/09

**Citation:** European Court of Human Rights, Genovese v. Malta, Application no. 53124/09, 11 January 2012

**Date of decision:** 11/10/2011

**State:** Malta

**Court / UN Treaty Body:** European Court of Human Rights

**Language(s) the decision is available in:** English

**Applicant's country of birth:** United Kingdom

**Applicant's country of residence:** United Kingdom

**Legal instruments:** European Convention on Human Rights (ECHR)

**Key aspects:** Acquisition of nationality, Determination/confirmation of nationality, Discrimination, Gender, Respect for private and family life

**Relevant Legislative Provisions:**

s.5 (2) (b), (3), (4), (5), (6) and (7), s.17 (1) (a) of The Maltese Citizenship Act, Chapter 188

Articles 8 and 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("The Convention")

## **Facts**

The applicant was born in Scotland to a British mother and a Maltese father, out of wedlock. The applicant's father failed to acknowledge the applicant as his son, despite it being confirmed scientifically and judicially.

The applicant's mother made a request for him to acquire Maltese citizenship, on his behalf. The Malta High Commission denied the initial request on the basis that the mother did not hold Maltese nationality and the absence of a Maltese citizen being on the applicant's birth certificate. The mother, therefore, brought subsequent proceedings to have the Maltese man recognised as the applicant's father on his birth certificate, which was amended to establish paternity.

The Government informed the applicant's mother that despite the establishment of a Maltese father, the applicant was still not eligible for citizenship, under the Maltese Citizenship Act, whereby children born out of wedlock were only eligible if their mother were Maltese. The applicant's enquiry was therefore rejected on the basis that Maltese citizenship could not be granted to an illegitimate child. The decision was in line with provisions of the Maltese Citizenship Act, where the illegitimate offspring was born to a non-Maltese mother and a Maltese father.

In 2002, pending judgment from the Civil Court, the applicant's mother brought constitutional proceedings on the applicant's behalf. Specifically, complaining that the provisions of the domestic law were contrary to the Maltese Constitution and the Convention.

The Civil Court found the provisions to violate the Maltese Constitution, based on discrimination in denial of citizenship but abstained from deciding on its compatibility with the Convention. On appeal to the Constitutional Court, the first-instance judgment was reversed in respect to compatibility with the Constitution, however, referred the case back to the Civil Court for judgment on the compatibility with the Convention.

On 4 November 2008, the Civil Court held that the Maltese Citizenship Act's provision s. 17(1)(a), breached the applicant's rights under Articles 8 and 14 of the Convention. The court held that the applicant's private life was affected as a result and that the applicant faced discrimination due to his illegitimate status and the sex of his Maltese parent.

On 27 March 2009, on appeal to the Constitutional Court, the decision was reversed, holding that the right to citizenship was not a substantive Convention right and any denial of citizenship would not restrict the applicant's family life, since he did not have a relationship with his father. It held that the State was therefore not obliged to grant citizenship to a non-national.

The applicant appealed his case to the European Court of Human Rights, stating that the Maltese provisions regulating citizenship by descent, discriminate against him and were contrary to provision Article 14 of the Convention in conjunction with Article 8.

### **Legal arguments by the applicant**

The applicant claimed that he had been discriminated against in violation of his rights under Article 8, on the grounds of his illegitimate status and/or the sex of his Maltese parent. His illegitimacy stemming from his unmarried parents restricted him from the parameters of section 5(2)(b) of the Maltese Citizenship Act granting him citizenship by descent. Besides, the applicant would have been granted citizenship had his mother been Maltese, however with a Maltese father and a British mother, he was denied Maltese citizenship based on his illegitimate status. He was not eligible for citizenship due to this status.

### **Legal arguments by the opposing party**

The Government submitted that as citizenship is not a right afforded by the Convention, differential treatment concerning illegitimate status could not violate Article 14 of the Convention.

The government argued that distinction in granting citizenship based on legitimacy was necessary, due to the missing link that children born out of wedlock have with their parents and in this case, the Maltese father. On grounds of the sex of the Maltese parent, the Government submitted the identity of the mother was always certain however this would not always be the case with the father. The Government argued this justified treating differently illegitimate children of Maltese fathers born to non-Maltese mothers.

The Government relied on the State's margin of appreciation afforded by the Convention to request dismissal of the case.

### **Decision & Reasoning**

The Court reiterated the protection afforded by Article 14 of the Convention, whereby a difference in treatment is discriminatory if it has no reasonable justification, pursues a legitimate aim, or has no reasonable relationship of proportionality between the means employed and aim sought. Whilst the margin of appreciation is afforded to the Contracting States in assessing to what extent differences justify different treatment in law, they are always read against the subject matter and background.

### **The 1975 European Convention on the Legal Status of Children Born out of Wedlock**

The Court inferred the judgment of *Marckx v. Belgium*, 13 June 1979, Series A no. 31, whereby two international conventions that the Contracting State (Belgium) has not yet ratified, where applicable to the case of children born out of wedlock. Against this background, the Court read the case in line with the evolving domestic law of the Council of Europe at the time, referencing *Inze v. Austria*, 28 October 1987, § 41, Series A no. 126, whereby the 1975 European Convention on the Legal Status of Children Born out of Wedlock was in force in nine member states of the Council of Europe. Referencing *Demir and Baykara v. Turkey* [GC], no. 34503/97, § 78, 12 November 2008, the Court observes there to be no need to distinguish between sources of international law according to if the respondent State has ratified it. Malta would therefore need to show a weighty defence to an arbitrary difference in treatment on the grounds of birth out of wedlock, to not be deemed incompatible with the Convention.

### **Differential treatment based on the illegitimate status**

The Court noted that the applicant's situation was no different to that of any child with a Maltese father and a mother of foreign nationality. The distinguishing factor, therefore, perturbed to be him being born out of wedlock which rendered him a non-citizen of Malta.

The Court proceeded that the Government's justification regarding the lack of a link with the applicant's parents resulting from the lack of parent's marriage, which results in the illegitimate status of the child, is precisely the link Article 14 of the Convention protects against. Any distinction based on such a status is therefore in violation of the Convention unless can be otherwise justified.

The Court noted the Government's submission of the mother being a certainty, whilst the father is not, could not be accepted, as regardless of the father being determined a paternal match, the distinction arising from the provisions of the Maltese Citizenship Act remained the same.

### **No reasonable ground for justification**

The Court, therefore, found that accordingly, there were no reasonable or objective grounds to justify the difference in treatment of an applicant born out of wedlock and finds a violation of Article 14 of the Convention in conjunction with Article 8.

### **Decision documents**

[Genovese v Malta \(ECtHR, 2011\).pdf](#)

### **Outcome**

The European Court of Human Rights held that there was a violation of Article 14 in conjunction with Article 8 of the Convention and applied Article 41 to afford just satisfaction as necessary for the injured party.

### **Caselaw cited**

Family K. and W. v. The Netherlands (no. 11278/84, Commission decision of 1 July 1985, Decisions and Reports (DR) 43

Nylund v. Finland (dec.), no. 27110/95, ECHR 1999-VI

Dadouch v. Malta, no. 38816/07, § 47, ECHR 2010

Karashev v. Finland (dec.), no. 31414/96, ECHR 1999-II

Slivenko v. Latvia (dec.) [GC], no. 48321/99, § 77, ECHR 2002-II

Sahin v. Germany [GC], no. 30943/96, § 85, ECHR 2003-VIII

Abdulaziz, Cabales and Balkandali v. the United Kingdom, 28 May 1985, § 71, Series A no. 94

Karlheinz Schmidt v. Germany, 18 July 1994, § 22, Series A no. 291-B

Petrovic v. Austria, 27 March 1998, § 22, Reports 1998-II

Stec and Others v. the United Kingdom (dec.) [GC], nos. 65731/01 and 65900/01, § 40, ECHR 2005-X

E.B. v. France [GC], no. 43546/02, § 48, ECHR 2008

Marckx v. Belgium, 13 June 1979, Series A no. 31

Inze v. Austria, 28 October 1987, § 41, Series A no. 126

Demir and Baykara v. Turkey [GC], no. 34503/97, § 78, 12 November 2008