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Report

drawn up on behalf of the Legal Affairs Committee

on discrimination between single mothers and married women as regards filiation in certain Member States

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At its sitting of 6 July 1981, the European Parliament referred the motion for a resolution tabled by Mrs LIZIN and others (Doc. 1-316/81) pursuant to Rule 47 of the Rules of Procedure, to the Legal Affairs Committee as the committee responsible.

On 15 July 1981 Mrs CINCIARI RODANO was appointed rapporteur.

On 2 November 1982, the Legal Affairs Committee considered the draft report and adopted the motion for a resolution unanimously with one abstention.

The following took part in the vote: Mrs Veil, chairman; Mr Chambeiron, vice-chairman; Mrs Cinciari Rodano, rapporteur; Mr Alber (deputizing for Mr Malangré), Mrs Baduel Glorioso (deputizing for Mr d'Angelosante), Mr Dalziel, Mrs Macciocchi, Mr Megahy, Mr Prout, Mr Sieglerschmidt, Mr Tyrrell, Mrs Vayssade and Mr Vié.

C O N T E N T S

A

The Legal Affairs Committee hereby submits to the European Parliament the following motion for a resolution together with explanatory statement:

MOTION FOR A RESOLUTION

on discrimination between single mothers and married women as regards filiation in certain Member States

The European Parliament,

- having regard to the motion for resolution (Doc. 1-316/81) on discrimination between single mothers and married women as regards filiation in certain Member States,

- having regard to the continuous and helpful action undertaken by the Council of Europe in this field,

- having regard, in particular, to the European Convention on the legal status of children born outside marriage which entered into force on 11 September 1978,

- having regard to the Joint Declaration by the Parliament, the Council and the Commission signed in Luxembourg on Friday, 5 April 1977,

- whereas, with a view to 'an ever closer union among the peoples of Europe', a start must be made to ensure that a solution to problems such as that described in the abovementioned motion for a resolution should be devised within the European institutions,

- having regard to the report of the Legal Affairs Committee (Doc. 1-861/82)

1. Notes the divergences between existing family rights in the Member States;

2. Points out, in particular, that in certain Member States discrimination exists between single mothers and married women on the one hand, and between natural and 'legitimate' children on the other;

3. Holds such discrimination, which is in contradiction with the general objectives of the Community, to be unacceptable;

4. Asks the Commission of the European Communities to examine the possibility of tackling problems such as those described above through Community action or other means and, possibly, binding measures;

5. Instructs its Legal Affairs Committee to review the results of such an examination and to report back to Parliament if appropriate;

6. Calls upon the Member States which have not yet signed and ratified the European Convention on the legal status of children born outside marriage to do so as soon as possible;

7. Instructs its President to forward this resolution to the Commission of the European Communities, and to the governments and parliaments of the Member States.

B

EXPLANATORY STATEMENT

1. The motion for a resolution tabled by Mrs LIZIN and other Members of the European Parliament concerning discrimination between single mothers and married women as regards filiation in certain Member States, asks the Legal Affairs Committee of the European Parliament to draw up a Community legal instrument to rectify this situation, which is discriminatory both to women and to children.

2. According to the information kindly provided by the European Parliament's Directorate-General for Research and Documentation, the main features of legislation currently in force in this area in the Member States and the candidate-countries differ substantially; as a result there exist various degrees of discrimination between legitimate and natural children on the one hand, and between married and single mothers on the other.

3. As regards the first of these two forms of discrimination (discrimination particularly affecting children), the Member States and candidate-countries may be divided, in general terms, into three main categories as regards existing legislation:

(a) States which have in practice assimilated the legal status of recognized natural children to that of legitimate children;

(b) States to which grant natural children, in respect of filiation with the mother, practically the same rights as are granted to legitimate children, but not in respect of filiation with the father (to varying degrees);

(c) States which grant natural children lesser rights than legitimate children, in respect of filiation with both the mother and the father.

4. In the Member States and candidate-countries in category (a), i.e. Italy, Luxembourg, Portugal, Denmark and France, the same laws apply with regard to parental authority (except for the right of cohabitation), the obligation to maintain children, family allowances and inheritance.

In these countries, the recognition of natural children by one or both of the parents constitutes the essential basis of filiation. Filiation with the mother is established automatically by the fact of birth, and a birth certificate showing the name of the mother implies recognition. However, a further distinction should be made as regards this last point. Under French law, recognition is not automatically implied by inclusion of the mother's name on the birth certificate if she is not also deemed to assume 'actual responsibility' for the child in question (in other words, if she does not act in a manner approporiate to her status as natural mother); to put it another way, the principle that 'mater semper certa est' is taken as tantamount to the assumption 'iuris tantum' (which is refutable), whereas in the other four countries mentioned in this category it is taken as an assumption 'iuris et de iure' (which is irrefutable).

As regards paternal recognition - in other words the means of establishing filiation with the father - it is not automatic in any of these countries (unlike the case of children born in wedlock, in respect of whom the principle 'pater is est quem nuptiae demonstrant' holds good). Generally speaking, this recognition may be established either through the birth certificate, or through a separate notarial act, or through a legal ruling, except in the case of children born out of incestuous relations, in respect of whom the law forbids the establishment of filiation.

Once the problem of the means of establishing filiation has been settled, when the two natural parents have recognized their own child, the natural child acquires in every way the same rights as a legitimate child. Minor differences may persist as regards passing on the parent's name and nationality, depending on whether or not the parents recognize the natural child at

the same time; in other words, if filiation is first of all established with the mother (irrespective of whether this occurs automatically or not), the child acquires the name and nationality of the mother, but with the possibility of using the name and nationality of the father upon attaining the age of majority.

In addition, if the parents marry at a later stage (matrimonium subsequens), the natural child acquires the full status of a legitimate child.

5. The second category includes the Federal Republic of Germany, the United Kingdom and the Netherlands. In these countries filiation with the mother is automatically established in the birth certificate, whereas that with the father must be established through a specific act; however, proposals exist, on which varying degrees of progress have been achieved, to modify these laws with the objective of securing maximum assimilation.

6. The third category includes Belgium, Ireland, Spain and Greece. In these countries the natural child has lesser rights than the legitimate child in respect of both the father and the mother.

Filiation with the mother - and indeed with the father - is not established automatically. The child is entitled only to maintenance and is not a member of the family.

The problem of the prejudicial situation in which such children find themselves has been widely discussed, in the case of Belgium, following the Marckx ruling (see paragraph 14 below and Annex I), and various proposed modifications are currently being examined with a view to securing the adoption in Belgium of legislation similar to that currently in force in Italy, Luxembourg, etc. The same point applies to Spain.

7. We shall now turn to the second type of discrimination, in other words between single mothers and married mothers with regard to their relationships with their respective issue. Such discrimination between two types of mother is less serious

than that which exists between natural and legitimate children and is largely a direct consequence of the discrimination against illegitimate children. Furthermore, the existence of differing treatment does not always automatically take the form of discrimination, bearing in mind that the application of laws designed for the institution of the family to other situations may produce results which do not always benefit either mother or child. Nonetheless, since discrimination exists, it should be considered as harmful to individual rights and unacceptable our civilized conscience.

It is not easy to subdivide the relevant laws, from this point of view, into specific categories; in general, however, we may point to differences in the following fields;

- as regards filiation with the mother, it is always established automatically from birth in the case of legitimate children, whereas this is not always and in every country the case for natural children;

- as regards passing on the parent's name: the single mother generally passes on her own name to the recognized natural child, whereas the legitimate child receives the name of the father or that chosen jointly by both parents;

- as regards nationality, the recognized natural child of the mother receives the nationality of the single mother, whereas the legitimate child receives the nationality of the father (sometimes that also of 'the parents');

- as regards parental authority, it is generally the case that the natural mother (as the legitimate mother) fully exercises this authority, either alone or jointly with the father, if the child has been recognized by one or both of the parents; only in cases where the mother must share authority with a guardian (even if the father is still alive) does the mother have lesser rights than the legitimate mother (as in Ireland and Greece);

- as regards the obligation to provide maintenance, the married mother, as the unmarried mother, must always provide maintenance for her own issue: the degree of this obligation, however, varies depending on whether or not filiation with the mother has been established and is unqualified only for the mother who has recognized her own issue (whether automatically or not);

- as regards domicile, the natural child recognized by the mother generally has as its legal domicile that of the mother, whereas a legitimate child has as its legal domicile that chosen jointly by both parents (with the exception of Ireland and Greece, where the father is still the sole head of the family);

- as regards rights of inheritance, there are still countries in which natural children do not have the same rights of succession in respect of the mother as legitimate children. Unmarried mothers do not have the same rights of donation or legacy to their issue as married mothers (a case in point being the position in Belgium).

8. An examination of these two aspects of the problem indicates that the affirmation of the authors of the resolution, as regards both the existence of discrimination between legitimate and natural children, and discrimination between single mothers and married women, is fully justified.

The legal status conferred on children born outside marriage in a society such as today's is particularly unjust inasmuch as it not only penalizes persons who are not responsible for their situation but in addition does not protect them sufficiently. However, in various Member States and candidate-countries family law - particularly as a result of the work undertaken by the Council of Europe - has undergone significant reforms over the last ten years; all these reforms aim at creating, as far as possible, complete equality between legitimate and natural children and between single and married mothers. However, not even the most advanced laws have been able to eliminate entirely the distinction between children born in wedlock and those born outside marriage, except in the case of the subsequent marriage of parents. Despite the changes which have taken place in our society, the legitimate family remains a fundamental element and is protected as such by the laws of the Member States.

9. Mention has already been made of the importance of the work carried out by the Council of Europe, in particular the European Convention on the legal status of children born outside marriage, which was opened for signature from

15 October 1975 and entered into force on 11 August 1978 after being signed by three Member States of the Council of Europe.

The provisions of the Convention are designed to assimilate the legal status of children born outside marriage and those born within marriage and contribute to the harmonization of the laws of the Member States.

Under the terms of the convention:

- filiation with the mother is established as an automatic consequence of birth and filiation with the father may be recorded or established following voluntary recognition or a legal ruling;

- parental authority is exercised jointly by the two parents in cases where filiation has been established with both parents and, in such cases, both parents generally have the same rights and obligations (including that of maintenance) in respect of natural issue as in respect of legitimate issue;

- rights of succession are the same for natural and legitimate issue;

- subsequent marriage between the mother and the father confers on natural issue the status of legitimate issue.

In addition, in the event of certain countries being unable to give immediate effect to certain provisions of the Convention, these countries may formulate reservations. No State may formulate more than three reservations and all States must in any case withdraw such reservations when the time comes to transform their own laws.

16. The ten Member States of the Community are all members of the Council of Europe as are the two countries which wish to accede to the Community, namely Spain and Portugal.

On 1 February 1982 the state of application was as follows:

Denmark	signed and ratified on 18 January 1979
United Kingdom	signed and ratified
France	signed on 2 September 1977
Italy	signed
Luxembourg	signed
Portugal	signed
Netherlands	not signed
Federal Republic of Germany	not signed
Ireland	not signed
Greece	not signed

In other words, two countries (Denmark and the United Kingdom) have already signed and ratified the Convention, four countries (France, Italy, Luxembourg and Portugal) have only signed it, and the remaining five have neither signed nor ratified it. If all the Community Member States were to sign and ratify the Convention, a major step forward would be achieved in the field of the legal status of the natural children.

11. As regards the search for a suitable legal basis upon which the Community institutions could act in this area, such action might be undertaken at three levels: the EEC Treaty, the principles jointly recognized by the Community institutions and Community jurisprudence.

12. At the level of the Treaty, the sole basis for Community action in this field, apart from the obvious example of the preamble, may be found in Article 235 which contains the basis for the spontaneous development of the Community beyond the purely economic sphere and, taken to its conclusion, the rough outline for the formation of a united Europe.

13. Fundamental importance must also be attached to the Joint Declaration by the Parliament, the Council and the Commission, signed in Luxembourg on 5 April 1977 by the Presidents of the three institutions, emphasizing 'the prime importance they attach

to the protection of fundamental rights as derived in particular from the constitutions of the Member States and the European Convention for the Protection of Human Rights and Fundamental Freedoms', and stating that 'in the exercise of their powers and in pursuance of the aims of the European Communities, they respect and will continue to respect these rights'.

14. The Court of Justice of the European Communities has decided, although undoubtedly somewhat late in the day, to fill the gaps in Community law as regards respect for human rights (in particular concerning the uncertainty as to whether inaction, for example in the area covered by this report, may affect human rights).

Confirming a position already outlined in the ruling on the Stauder case[1], in its ruling on the 'Internationale Handelsgesellschaft' case of 17 September 1970 the Court stated that 'respect for fundamental rights forms an integral part of the general principles of law protected by the Court of Justice'[2]. Thus for the first time the Court affirms the need to manifest 'Community legal precedence' in the field of human rights, essentially through the substance of general legal principles and by taking due account, in consequence, of the constitutional traditions common to the Member States. Subsequently, completing its sources, the Court pointed out that, in ensuring the safeguard of such fundamental rights, it must base its decisions on the international instruments concerning human rights which the Member States had adopted or adhered to[3] and, in particular, the European Convention on Human Rights[4].

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[1] Ruling of 12 November 1969 - Case 22/69, 1969 Reports

[2] Case 11/70, 1970 Reports, p. 1125

[3] Nold Ruling of 14 May 1974, 1974 Reports, p. 49

[4] Rutili Ruling of 28 October 1975, 1975 reports, p. 1219

Finally, therefore, the Luxembourg Court, moving away from the essentially economic provisions of the Treaty, has been able to deduce, through a finalist and extremely liberal interpretation, a whole series of social rights in a broad sense, even if such rights do not relate to the direct extension of the economic activities in question.

However, this evolution has not been fully completed and may finally give rise to a consecration of rights traditionally considered as civil and political.

It should nevertheless be underlined that referral under Community jurisprudence to the European Convention on Human Rights may be held as tantamount to recognition of the jurisprudence of the European Court of Human Rights as one of the sources of Community Law, at least as regards matters connected with powers provided for under the Treaties. Moreover, it involves precedents which might be binding in broader terms, thereby conferring particular significance as a legal precedent on the ruling delivered by that Court against the Belgian State in the Marckx Case on 13 June 1979, a ruling of considerable importance as regards the subject of the motion for a resolution under consideration (see Annex I).

15. In conclusion, the Commission of the European Communities should be asked to investigate, within the framework of the exercise of its power of initiative, the possibility of preparing legislative action by the Community to ensure the elimination in future of discrimination between single mothers and married women on the one hand, and natural and legitimate children on the other; such legislation should also be based (in the light of the jurisprudence of the Court of Justice) on the fundamental legal principles contained in the international conventions to which the Member States adhere.

The results of this study should be communicated to the European Parliament's Legal Affairs Committee with a view to its discussion by the latter.

16. However, pending a practical positive outcome of such action, the European Parliament can only note and deplore the existence of discrimination between individuals merely on the grounds of birth.

The European Parliament therefore urges the Member States, as an interim political measure likely to mitigate the effects of this discrimination, to ratify the Council of Europe Convention on the legal status of children born outside marriage.

ANNEX I

Ruling of the European Court of Human Rights against the Belgian State on the MARCKX Case: summary of the case
(extract from 'Objectif Europe', Brussels, 7 December 1979)

'On 16 October 1973 in Belgium, a young single mother gave birth to a child, Alexandra. Belgian law did not recognize any ties of parenthood between the mother and her natural daughter; the mother therefore had first to recognize her daughter and then adopt her, as adoption is the only means open to a single mother who wishes to improve the legal status of her own issue once she has recognized the child as her issue. However, adoption does not confer on the natural offspring the same rights as would be conferred on a child born in marriage, and Alexandra enjoys only limited rights as regards succession and donation, and is not considered as a member of her mother's family.

From her birth to the end of the adoption procedure, two years elapsed and these various procedures resulted in considerable expenditure for Paula Marckx.

In 1974 Paula Marckx therefore appealed to the European Commission of Human Rights, and in March 1978 the case came before the Court of Human Rights. This Court was called upon to decide whether the provisions of Belgian law relating to issue born outside marriage constituted in this case a breach of respect for private and family life (Article 8 of the European Convention on Human Rights), and discrimination against natural children and those of single mothers (discrimination in contradiction of Article 14 of the Convention). At the same time, the court was asked to rule on the violation of Article 1 of the Protocol (right of property) given that the unmarried mother was unable to dispose freely of her own estate in favour of her issue. The Belgian Government had declared in this case, inter alia, that existing Belgian legislation gave the natural mother the

option to chose between recognizing her issue and failing to show interest, and put the view that it might be dangerous to subject such issue to the care of a person that had not in any way expressed a desire to look after them.

The Commission of Human Rights had rejected this scarcely convincing argument, replying that a married mother could just as well not wish to bring up her own children and yet, in such cases, freedom of choice did not exist, seeing that filiation with the legitimate child was established automatically as a result of birth. The Court also pointed out that the Bill sent before the Belgian Senate on 15 February 1978 showed how the difference in treatment between Belgian citizens, according to whether their filiation was established inside or outside marriage, constituted a flagrant breach of the principle of the equality of all Belgians before the law'.

The European Commission of Human Rights concluded by recognizing that there had been violation of Articles 8 and 14 and of Article 1 of Protocol No. 1. The ruling was delivered on 13 June 1979.

Examination of a case by the Court is usually carried out by a Chamber consisting of seven judges. However, as the Marckx Case raised important questions concerning the interpretation of the European Convention on Human Rights, it made exception of its own lack of competence by convoking a plenary session of the Court composed of twenty judges. This gives an indication of the importance of this case, not only for Belgium but for all the signatory countries of the Convention.

The case of Alexandra is but one example of the inequality which exists between legitimate and natural children (non-automatic filiation, reduced obligation to provide maintenance and limited rights of succession).

ANNEX II

MOTION FOR A RESOLUTION (Doc. 1-316/81)

tabled by Mrs LIZIN, Mr VAN MIERT, Mrs VAYSSADE, Mrs WIECZOREK-ZEUL, Mrs HOFF, Mr LINDE, Mrs VIEHOFF, Mr ADAM, Mr ROGERS, Mrs SPAAK and Mrs SQUARCIALUPI

pursuant to Rule 47 of the Rules of Procedure

on discrimination between single mothers and married women as regards filiation in certain Member States

The European Parliament,

- having regard to the European Parliament's resolution of 11 February 1981 on the position of women in the European Community[1],

- having regard to the United Nations 1975-1985 ten-year plan which is aimed at improving the situation of women and which was reviewed and updated by the Copenhagen Conference in July 1980,

- having regard to the Council of Europe's resolution (70) of 15 May 1970 on the protection of single mothers and their children,

- having regard to the judgment of 13 June 1979 of the European Court of Human Rights[2],

- deploring the discrimination between single mothers and married women resulting from the legislation on filiation in certain Member States,

- considering it intolerable that discrimination, based solely on birth, between 'natural' and 'legitimate' children should be allowed to continue in the Community,

Asks that the European Parliament's Legal Affairs Committee be instructed to draw up a report on the creation of a Community legal instrument to rectify this situation, which is discriminatory both to women and to children.

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[1] OJ No. C 50 of 9 March 1981, p. 35

[2] Eur. Court of Human Rights, Marckx Case, judgment of 13 June 1979, series A No. 31