



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

Information Note on the Court's case-law 222

October 2018

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***Delecolle v. France* - 37646/13**

Judgment 25.10.2018 [Section V]

**Article 34**

**Locus standi**

*Locus standi* of the partner, for eight years, of the applicant, who had since died

**Article 12**

**Marry**

Refusal to authorise marriage of individual placed under system of legal protection: *no violation*

*Facts* – The applicant, who is now deceased, had been placed under enhanced protective supervision (*curatelle renforcée*). He sought authorisation from his supervisor in order to marry his partner, but his request was denied. The applicant appealed against the decision but was unsuccessful.

*Law*

Article 34 (*locus standi*): The applicant's partner, who had been with him for eight years until his death, expressed the wish to maintain the application before the Court. Neither their relationship nor the intention of getting married, which they had shared, had been challenged. The couple constituted a "family" for the purposes of Article 8 of the Convention and they were entitled to the protection guaranteed by that Article even though they were not married. The partner wishing to maintain the application submitted that its subject-matter, namely the limitations on the right to marry for individuals under a legal protection system, raised an important general question going beyond the person and interests of the initial applicant, since it could affect other individuals.

Accordingly, the conditions whereby a case could be struck out under Article 37 § 1 of the Convention were not satisfied and the examination of the application had to be continued. For practical reasons the judgment would continue to refer to the "applicant", even though that capacity was now exercised not by the deceased but by his partner.

Article 12: Individuals under protective supervision were not deprived of the right to marry. However, their marriage was subject to prior authorisation on account of the restriction of their legal capacity, which was one of the substantive grounds recognised by the case-law.

The decision whereby the applicant had been denied authorisation to get married had first been taken by his protective supervisor, after hearing both the applicant and his partner. The guardianship judge had then considered that the applicant's plan ran

counter to his interest, after, firstly, a welfare investigation which had shown the existence of a financial stake at the heart of a major family conflict, in which his interest and well-being seemed not to be given much consideration; and secondly, a psychiatric assessment, which had found some impairment of his mental faculties, and, while regarding him as having the capacity to give his consent to the marriage, concluded that he was incapable of controlling the consequences of his consent in terms of his property and finances. The guardianship judge's decision had given ample reasoning and the applicant had been able to appeal against the judgment. The judgment of the Court of Appeal, also giving reasons, had been delivered after a hearing during which the applicant, who had been present and assisted by his lawyer, had been able to submit his arguments.

The applicant had subsequently appealed to the Court of Cassation, exercising his right to raise a priority question of constitutionality concerning the alleged interference with the principle of freedom to marry, on account of the need for the authorisation of the supervisor, or otherwise that of the guardianship judge, for an adult under protective supervision. In its decision, the Constitutional Court noted that Article 460, paragraph 1, of the Civil Code did not prohibit marriage but subjected it to the authorisation of the supervisor, whose refusal could be appealed against to the judge. The judge would then, after hearing the parties, give a reasoned decision against which an appeal would also lie. It concluded that, having regard to the resulting personal and financial obligations, marriage was an important act of civil life and restrictions on the freedom to marry would not constitute a disproportionate interference. As to the Court of Cassation, it rejected the applicant's appeal, citing the decision of the Constitutional Court and finding that the Court of Appeal had legally justified its decision by analysing the various documents in the file, which had enabled it to infer that the applicant was not in a position to give informed consent to his marriage.

In the European Court's view, the applicant's status meant that the present case was different from previous cases concerning individuals who had full legal capacity. Unlike the situations in which individuals were deprived in all circumstances of the right to get married, the obligation for the applicant to request prior authorisation for that purpose could be explained by the fact that he was covered by a measure of legal protection, as he was placed under an enhanced measure of protective supervision. The authorities had thus had a margin of appreciation in the present case, as regards both the impugned legal provisions and the denial of authorisation, in order to be able to protect him effectively in the light of the circumstances and thus to foresee any consequences that might harm his interests. Article 460, paragraph 1, of the Civil Code in fact safeguarded the right to marry, as the Constitutional Court had confirmed. To be sure, certain limitations were provided for, but they were circumscribed, being accompanied by remedies making it possible to obtain judicial review, in adversarial proceedings, of any restrictions on the right to marry. That had been shown to be true in the applicant's case, as he had used the relevant domestic remedies and had been able to submit his arguments in adversarial proceedings in order to challenge the decision to deny him authorisation. In addition, as the Constitutional Court had pointed out, the protective supervision system was intended to safeguard the interests of the protected person and, as far possible, to support that person's autonomy.

Accordingly, the limitations on the applicant's right to marry had not restricted or reduced that right in an arbitrary or disproportionate manner.

*Conclusion:* no violation (six votes to one).

(See also *F. v. Switzerland*, [11329/85](#), 18 December 1987; *Malhous v. the Czech Republic* (dec.) [GC], 33071/96, 13 December 2000, [Information Note 26](#); *Christine Goodwin v. the United Kingdom* [GC], 28957/95, 11 July 2002, [Information Note 44](#); *B. and L. v. the United Kingdom*, 36536/02, 13 September 2005, [Information Note 78](#);

*O'Donoghue and Others v. the United Kingdom*, 34848/07, 14 December 2010, [Information Note 136](#); and *Lashin v. Russia*, 33117/02, 22 January 2013, [Information Note 159](#))

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