

Fretté v. France (Application no. 36515/97)

1) Reference Details

Jurisdiction: European Court of Human Rights

Date of decision: 26 February 2002

Link to full case:

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&key=33882&portal=hbkm&source=external&table=285953B33D3AF94893DC49EF6600CEBD49>

2) Facts

The Applicant, a French national, Mr. Philippe Fretté, alleged a violation by France of Article 8 in conjunction with Article 14 and Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention").

The Paris Social Services, Child Welfare and Health Department opened a social inquiry into the Applicant's request for approval to adopt a child that he had lodged in October 1991. During the interview with a psychologist from the Department, the Applicant revealed that he was a homosexual. In their final report, experts at Social Services found that "Mr. Fretté has undoubted personal qualities and an aptitude for bringing up children," but questioned whether "his particular circumstances as a single homosexual man allow him to be entrusted with a child." By decision dated 3 May 1993, the Paris Social Services Department rejected his request for authorization to adopt and on 15 October 1993, refused to reconsider the decision indicating, among other things, that the Applicant's "choice of lifestyle" did not seem to be one that would provide a child a suitable home. The Applicant lodged a petition for judicial review of that decision with the Paris Administrative Court, which, in a judgment of 25 January 1995, set aside the decisions refusing the Applicant authorization. The Administrative Court ruled that there was no evidence that "Mr. Fretté's lifestyle reflected a lack of moral rigor or emotional stability, or a risk that he would abuse the adoption process, or any other conduct indicating that his plan to adopt presented a risk to any child he might adopt." The Paris Social Services appealed against that judgment to the *Conseil d'Etat*.

In its judgment of 9 October 1996, the *Conseil d'Etat* set aside the Administrative Court's judgment and referred to the Applicant's lifestyle which "did not provide the requisite safeguards -- from a child-rearing, psychological and family perspective -- for adopting a child." In his submissions to the European Court of Human Rights ("the Court"), the Applicant alleged that the decision to dismiss his application for authorization to adopt amounted to an arbitrary interference with his private and family life within the meaning of Article 8 of the Convention, and that it was based exclusively on an unfavorable prejudice about his sexual orientation.

3) Admissibility

The Application was found to be partly admissible.

4) Merits

The Court noted that the Convention does not guarantee the right to adopt as such. Moreover, it emphasized that the right to respect for family life presupposes the existence of a family and does not safeguard the mere desire to found a family. However, it observed that French domestic law authorizes all single persons -- whether men or women -- to apply for adoption provided that they are granted the prior authorization required to adopt children in State care or foreign children. The Court found that even though the French administrative and judicial authorities had not made any express reference to the Applicant's homosexuality, the references to "choice of lifestyle" implicitly yet undeniably made the Applicant's homosexuality the decisive factor. Accordingly, Article 14 of the Convention, taken in conjunction with Article 8, is applicable.

The Court held that the decisions to reject the Applicant's application for authorization pursued a legitimate aim, namely to protect the health and rights of children who could be involved in an adoption procedure. In ascertaining whether the difference of treatment revealed in the case was justified, the Court observed that the Contracting States enjoy a certain margin of discretion in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law. The scope of the margin of discretion will vary according to the circumstances, the subject matter and the background; in this respect, one of the relevant factors may be the existence or non-existence of common ground between the laws of the Contracting States. In the Court's view, the delicate issues raised in the present case touched on areas where there is little common ground amongst the member States of the Council of Europe and thus a wide margin of discretion must be left to the authorities of each State. Moreover, the scientific community -- particularly experts on childhood, psychiatrists and psychologists -- is divided over the possible consequences of a child being adopted by one or more homosexual parents.

Taking into account the broad margin of discretion to be left to States and the need to protect children's best interests, the Court concluded that the refusal to authorize adoption did not infringe the principle of proportionality.

5) Decision

The Court held that the difference in treatment complained of is not discriminatory within the meaning of Article 14 of the Convention.

6) Concurring Opinion

A partly concurring opinion held that since the Convention does not guarantee a right to adopt and does not also guarantee a right to establish a family, the State has not violated the Applicant's rights under Article 8 of the Convention and therefore Article 14 was not applicable.

7) Dissenting Opinion

A joint partly dissenting opinion emphasized that while Article 8 does not guarantee a right to adoption, by allowing single persons to apply for adoption, France went beyond what was required by way of a positive obligation under Article 8 of the Convention. Having provided for such a right and established a system for administering it, the State was bound

to ensure that "no unwarranted discrimination is made between single persons on the grounds listed in Article 14 of the Convention."