

January 2008

Epstein and Others v. Belgium - 9717/05

Decision 8.1.2008 [Section II]

Article 14

Discrimination

Legislation implementing measures in favour of Jewish and Roma victims of the Second World War subject to condition that they had held Belgian nationality from a specified date: *inadmissible*

A Law was passed introducing new measures in favour of war victims, including giving deportees who had not had Belgian nationality on 10 May 1940 the same advantages as those that had previously been granted to persons having political prisoner status, in respect of pensions and a war pension. A life annuity equivalent to that awarded to those who had refused compulsory labour was introduced for the benefit of orphans whose mothers and fathers had died in deportation, and also for people of Jewish or Gypsy origin who had been forced to live in hiding. The Law specified that only people who had Belgian nationality on 1 January 2003 and had resided in Belgium during the German occupation were entitled to these benefits. The applicants applied for life annuities, but their applications were rejected, one of the reasons being that they had not, or had no longer, been Belgian citizens on 1 January 2003. The notice accompanying the decisions specified that an appeal to have them set aside could be lodged with the *Conseil d'Etat* within sixty days. One applicant lodged an appeal. She argued that by limiting entitlement to the annuity it instituted to people who were Belgian nationals on 1 January 2003, the law had introduced a difference of treatment incompatible with the Constitution (principle of equality and non-discrimination). She also asked the *Conseil d'Etat* to submit a preliminary point of law to the Administrative Jurisdiction and Procedure Court. Other applicants lodged an appeal with the Administrative Jurisdiction and Procedure Court to have the Law annulled. They argued, *inter alia*, that the Law was contrary to the principles of equality and non-discrimination guaranteed by the Constitution, particularly the requirements to have been a Belgian national on 1 January 2003, to have lost both parents and to have been forced to live in hiding, and the non-retroactivity of the compensatory measures. The Administrative Jurisdiction and Procedure Court and the *Conseil d'Etat* dismissed the appeals.

Inadmissible under Article 14 taken together with Article 1 of Protocol No. 1 (following dismissal of the preliminary objection of the six-month time-limit and the exhaustion of domestic remedies). – If a State decided to make amends for damage for which it bore no responsibility, it had a wide margin of appreciation, particularly when it came to determining the forms and beneficiaries of the reparation. In this case the State had decided to award compensation to war victims for damage for which it was not responsible. The impugned Law, which had relaxed the citizenship requirements introduced by the previous legislation, had been discussed at length prior to its enactment, in Parliament and in talks with the community concerned. It contained significant advances in favour of deportees and objectors, as well as measures aimed specifically at Jewish and Gypsy war victims. In such a context the State should be free to define its own criteria for the compensation of civilians who had suffered as a result of acts of

war by another State, and applicants should meet the requirements specified in the legislation in order to qualify for the financial advantages proposed. In that respect this case differed from those in which the Court had found violations of Article 1 of Protocol No. 1 taken together with Article 14 of the Convention, which all concerned the allocation of welfare benefits, whether contributory or non-contributory: *incompatible* ratione materiae.

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