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The Marckx ruling examined

On Tuesday, March 1, 2011 Gandaius, the alumni association of the Faculty of Law of Ghent University, organized a study evening on the Marckx ruling by the European Court of Human Rights (ECHR), a milestone in the Belgian legal world.

The facts were as follows: in 1973 Alexandra was born as the child of an unmarried mother, Ms. Paula Marckx, and was therefore an 'illegitimate' child. Since the Civil Code of 1804, only children born within the marriage bond were considered legitimate and, hence, had a full affiliation bond with the parents so they could inherit. This was different for children born outside a marriage, in this case Alexandra. To establish the affiliation bond, Paula had to recognize and adopt her own daughter, but this had its effects on both the extent of the child's family relations and the patrimonial rights of both the child and its mother. The European Court of Human Rights ruled on June 13, 1979 that such distinction was a violation of Articles 8 and 14 of the European Convention on Human Rights and Article 1 of the First Protocol. Belgium was condemned and had to adapt its legislation. Nevertheless, the abolition of all discrimination between children, whether they are born within or outside a marriage, did not take place before March 31, 1987, when the outdated Belgian law was changed.

The Ghent study evening started with a historical introduction. Dr. Bruno Debaenst, legal historian at Ghent University, gave a lively lecture about the discrimination of 'illegitimate' children. Throughout history, children born outside a marriage were discriminated especially as far as their inheritance rights were concerned.

After the historical contribution Gerd Verschelden, professor of Family Law at Ghent University, gave an exposé about the Marckx ruling in the actual Belgian legal context, where there's nowadays much ado about surrogacy and the right for women to give 'discrete' birth to a child. These developments could mean a profound change in the Belgian law.

Alfons Heyvaert, professor emeritus from Antwerp University, was the third contributor and told in his particular style about the shock that the Marckx ruling brought to the Belgian legal system.

Last but not least the word was given to the person who turned the Belgian legal world upside down: Paula Marckx. She told in a very fascinating way the more than 150-people audience her personal story, the story of a woman who wanted to alter the situation of her ten month old child. In name of Alexandra Marckx, who was too young, a complaint was filed v. Belgium and, accompanied by a young attorney, Paula Marckx went to the European Court in Strasbourg though she never expected to win the case. But the Court ruled in favor of the plaintiff, which lead to one of the most important changes in Belgian family law. Since

1987, the mere fact of giving birth to a child establishes the affiliation between mother and child.

Meeting the woman behind this landmark case of Belgian family law was for the many jurists in the audience a particular experience. The Marckx case is well known among lawyers, but listening to the woman who initiated it gave it a bigger dimension. Paula Marckx, although already in her eighties, brought her colorful story, sometimes with a humorous touch, straight to the heart of her listeners and, especially, still with the same enthusiasm as with which she started her claim almost forty years ago. Paula Marckx is a woman to admire.

S. Vandenbogaerde