In the case of B. and L. v. the United Kingdom,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Mr J. Casadevall, *President*,
Sir Nicolas Bratza,
Mr G. Bonello,
Mr R. Maruste,
Mr S. Pavlovschi,
Mr L. Garlicki,
Mr J. Borrego Borrego, *judges*,
and Mr M. O'Boyle, *Section Registrar*,

Having deliberated in private on 29 June 2004 and on 25 August 2005,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 36536/02) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by British nationals, **B**. and L. ("the applicants"), on 30 September 2002.

2. The applicants, who had been granted legal aid, were represented by Ms Sawyer, a lawyer working for Liberty, London. The United Kingdom Government ("the Government") were represented by their Agent, Ms Emily Willmott of the Foreign and Commonwealth Office, London.

3. The applicants, who are father-in-law and daughter-in-law, complain that they are prohibited from marrying each other, invoking Articles 12 and 14 of the Convention.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 29 June 2004, the Court declared the application admissible.

6. The applicants and the Government each filed observations on the merits (Rule 59 § 1).] The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*). The parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicants were born in 1947 and 1968 respectively and live in Warrington.

8. The first applicant, **B**, married A and this marriage ended in divorce in 1987. **B** and A had a son together, C. The first applicant then married D. The first applicant and D separated in August 1994 and the divorce was finalised on 9 July 1997.

9. The second applicant, L, married C, the first applicant's son from his first marriage. The first applicant and the second applicant were therefore father-in-law and daughter-in-law. The second applicant and C separated in 1995 and their divorce was finalised on 8 May 1997. The second applicant and C have a son together, W. The first applicant is, therefore, W's grandfather.

10. A relationship developed between the first and second applicants in 1995 after C had left the second applicant's matrimonial home. The applicants have been cohabiting since

1996. W lives with the applicants and only has sporadic contact with his father, C. W now calls the first applicant "Dad". The applicants plan to adopt W which is permitted by domestic adoption law.

11. In a letter dated 29 May 2002, the first applicant wrote to the Superintendent Registrar of Deaths and Marriages at Warrington Register Office to inquire about whether he could marry the second applicant. In a letter dated 13 June 2002, the Superintendent Registrar stated that under the relevant domestic legislation, it would be impossible for the applicants to marry unless A and C were both dead:

> "... The only circumstances a marriage could be allowed between yourself and [L] would be if you had both attained the age of twenty one and you could produce evidence of the death of your son and his mother (your first wife)."

12. The applicants subsequently sought legal advice on whether there was any remedy against the decision of the Superintendent Registrar but were advised by counsel that no remedy existed since the basis for the decision was primary legislation, namely, the Marriage Act 1949 as amended by the Marriage (Prohibited Degrees of Relationship) Act 1986.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. The Marriage Act 1949

13. Section 1 of the Marriage Act 1949, as amended by the Marriage (Prohibited Degrees of Relationship) Act 1986, ("the 1949 Act"), provides that:

> "(4) Subject to subsection (5) of this section, a marriage solemnized between a man and any of the persons mentioned in the first column of Part III of the First Schedule to this Act or between a woman and any of the persons mentioned in the second column of the said Part III shall be void.
>
> (5) Any such marriage as is mentioned in subsection (4) of this section shall not be void by reason only of affinity if both parties to the marriage have attained the age of twenty-one at the time of the marriage and the marriage is solemnized –
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> ...
>
> (**b**) In the case of a marriage between a man and the former wife of his son, after the death of both his son and the mother of his son;
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> (c) In the case of a marriage between a woman and the father of a former husband of hers, after the death of both the former husband and the mother of the former husband;
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> ..."

14. Part III of the First Schedule to the 1949 Act contains lists of persons between whom marriage is prohibited. The first column referred to in section 1(4) of the Act includes the former wife of a man's son and the second column includes the father of a woman's former husband.

15. The 1949 Act contained an absolute prohibition on marriages between former father-in-law and daughter-in law until section 1(5) was introduced by the Marriage (Prohibited Degrees of Relationship) Act 1986 ("the 1986 Act").

16. By virtue of section 1(3) of the 1949 Act (as amended), marriages between former step-parents and step-children are not void if both parties have attained the age of 21 and the younger party was never "a child of the family" in relation to the other party. The 1949 Act does not stipulate that marriages between an uncle and niece or an aunt and nephew are void in cases where there is no consanguinity between the two parties.

2. Proposals for reform of the law

17. Prior to the enactment of the 1986 Act, a report, entitled "No Just Cause: Affinity: Suggestions for Change" was drawn up in 1984 by a group appointed by the Archbishop of Canterbury, including members of the House of Lords, on the question of the prohibition of marriages on the grounds of affinity. This report suggested some of the amendments to the law made in the 1986 Act. A report drawn up by the majority concluded that:

> "Most, perhaps, all, members of the Group started from an intuitive reaction that it was not only unlawful to marry one's mother-in-law or father-in-law, but also that it was undesirable, and perhaps sinful and perilous. But as we studied and discussed the accumulating material we gradually came to recognise that the prohibition is based simply on tradition and cannot now be justified on any logical, rational or practical ground. The experience of other states where there has never been such a prohibition provides a strong and persuasive argument for abolishing these impediments on marriage. In our view, the retention of these legal impediments is not essential to the maintenance of healthy and stable relationships within the extended family.
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> ...
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> The younger person in the above lists will scarcely ever have been a child of the family of the older person before the younger person had attained the age of 18. Moreover, he or she will also have married (at least once) and for that ceremony the law and society will have treated him or her as having had the capacity and maturity to marry. Thus our principal concern of wishing to afford some protection to the younger person in those circumstances would be satisfied if the existing legal impediments preventing a lawful marriage being solemnised between a man and a woman and his or her affine in classes C and D [parent-in-law and child-in-law] were removed"

18. The minority report recommended the "retention of the impediment on marriage between parent-in-law and child-in-law" on the basis that it raised the same difficulties as step-parent and step-child, namely it "would condone sexual rivalry between father and son, or mother and daughter, which, within the close confines of the family, would be destructive of the father and son, or mother and daughter, relationships":

> "... In addition ... it would deprive the child-in-law of his or her safety of place as a child in the new family into which he or she marries. When for instance a son brings his wife to his father's home, there is an underlying assumption that the daughter-in-law will assume a role in relation to her father-in-law which is exempt of sexual expectations. To admit the possibility of a future marriage between parent-in-law and child-in-law would be to undermine assumptions which make for the safety and comfort of the adult family."

19. The bill as put forward for adoption represented the common ground between the majority and minority views – it excluded change for the impediment for in-laws and removed the impediment for step relations, where both parties were over 18 and the younger party had never been treated as a child of the family.

During the consideration of the bill which became the 1986 Act in the House of Lords, Lord Denning unsuccessfully proposed an amendment which would remove the impediment to a parent-in-law marrying his or her child-in-law. He argued that this was necessary in order to make the law consistent since the bill would remove the impediment to a step-parent marrying his or her step-child and the case of a parent-in-law and child-in-law was, if anything, less problematic. However, this proposed amendment was not adopted.

3. Exemption by personal Act of Parliament

20. It is possible for a marriage between a former parent-in-law and child-in-law to be permitted in individual cases by a personal Act of Parliament. The personal Act effectively exempts the individuals from the application of a statutory prohibition on marriage. Whether such an Act is passed or not is at the discretion of Parliament.

21. Such personal Acts have been passed several times in the past although no Act of this nature has been sought or passed since 1987. For instance, in the *Valerie Mary Hill and Alan Monk (Marriage Enabling) Act 1985*, Parliament permitted the proposed marriage between

Valerie Hill, the mother of Alan Monk's first wife, and Mr Monk. At the time of this personal Act, the 1986 Act had not yet been passed and, therefore, there was an absolute prohibition under the 1949 Act on marriage between parents-in-law and children-in-law. In considering the personal bill, several members of the House of Lords noted that the facts of the case were not "exceptional". The resulting personal Act set out the facts of the case, from which it appeared the couple were living in the same household and wished to bring up the children of the son-in-law (and grandchildren of the mother-in-law) in a stable home. It continued:

> " ... (8) Valerie Mary Hill and Alan Monk regard the legal impediment to their marriage as imposing hardship on them, and as serving no useful purpose of public policy in the particular circumstances of their case:
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> (9) They accordingly desire that the impediment should be removed in their case:
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> (10) The object of this Act cannot be attained without the authority of Parliament:
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> Therefore Valerie Mary Hill and Alan Monk most humbly pray that it may be enacted, and be it enacted, by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-
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> 1. Notwithstanding anything contained in any enactment or any rule of law to the contrary, there shall be no impediment to a marriage between Valerie Mary Hill and Alan Monk by reason of their relationship of mother-in-law and son-in-law, and no marriage hereafter contracted between them shall be void by reason of that relationship.
>
> ..."

22. There are no established criteria for the granting of a personal Act of Parliament in order to permit a marriage otherwise prohibited by the 1949 Act. There is no investigation into the facts as submitted by the individuals in question. The costs of obtaining a personal Act of Parliament are GBP 200 at the First and Third Reading of the bill in each House of Parliament, amounting to GBP 800, plus the fees of a "Roll A" Parliamentary Agent, who is the only person permitted to promote a personal bill. Legal aid is not available for the costs of obtaining a personal Act of Parliament.

23. This procedure of seeking a personal Act of Parliament in order to authorise an otherwise prohibited marriage was commented on by Viscount Davidson in the House of Lords during the passage of the 1986 Act in the following terms:

> "... Parliament has from time to time enacted laws enabling particular couples to marry, notwithstanding that they are related as step-parent to step-child or parent-in-law to child-in-law. I do not think that anyone has suggested that this is a particularly suitable way of deciding whether two people so related should be allowed to marry. It has been criticised as cumbersome, expensive and unseemly. In the Second Reading of the Sonia Ann Billington and Norbury Billington (Marriage Enabling) Bill, my noble and learned friend the Lord Chancellor said that it offended his sense of justice that the House should be asked to decide without evidence whether a couple should be enabled to marry ..." (Viscount Davidson, HL Hansard 9 December 1985, col. 59)

Lord Meston stated during the debate:

> "Personal Bills are costly, embarrassing and time-consuming for this House. They add to the anxieties of the couple who should of course be a happy couple. They always receive a sympathetic hearing and the three recent Bills involving mature step-relations have passed through this House without any great difficulty. But it all tends to suggest that there is one law for those who hear of the procedure and who can afford it in its practical consequences. Apart from a personal Bill or going abroad the other alternatives are for the couple either to live together without marriage, without consequences such as illegitimacy and the lack of any widows' pension for the lady or for them to part with consequential distress for all concerned."

4. The Human Rights Act 1998

24. Section 4 of the Human Rights Act 1998 provides:

"(1) Subsection (2) applies in any proceedings in which a court determines whether a provision of primary legislation is compatible with a Convention right.

(2) If the court is satisfied that the provision is incompatible with a Convention right, it may make a declaration of that incompatibility.

(6) A declaration under this section ... -

(a) does not affect the validity, continuing operation or enforcement of the provision in respect of which it was given; and

(**b**) is not binding on the parties to the proceedings in which it is made."

25. Section 10 provides:

"(1)This section applies if -

(a) a provision of legislation has been declared under section 4 to be incompatible with a Convention right (...)

(2) If a Minister of the Crown considers that there are compelling reasons for proceeding under this section, he may by order make such amendments to the legislation as he considers necessary to remove the incompatibility."

26. The 1998 Act entered into force on 2 October 2000.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 12 OF THE CONVENTION

27. The applicants, father-in-law and daughter-in-law, complain that they are not allowed to marry, invoking Article 12 of the Convention which provides:

"Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right."

A. The arguments of the parties

1. The applicants

28. The applicants submitted that the restriction denied them the very essence of the right to marry as they are absolutely prevented from exercising that right at this time and for the foreseeable future. The restriction was also disproportionate and unjustified. As regarded the Government's argument that it was not absolute, the solutions proposed required either a father to outlive a son or a personal Act of Parliament, which required money and stamina to pursue legislation in circumstances where no criteria existed for showing when an application might be successful. The examples of personal Acts of Parliament which permitted couples in their situation to marry showed that there was no justification for the prohibition in their case either.

29. The applicants noted that the majority in the report before the House of Lords were in favour of lifting the restriction as serving no purpose. Even the minority were more concerned about the relationship of step-father and step-daughter, in which respect the prohibition was in the end removed. There were, in the applicants' view, no sensible or coherent distinctions between their situation and that of other categories which were permitted (step-father and step-child, brother-in-law and sister-in-law etc). They asserted that in their own case both relationships with their previous partners had failed at the time they commenced their relationship with each other and there could be no suggestion of any situation of sexual rivalry

between father and son. Nor was there any ground for objection arising from the impact on the second applicant's son, since he actively supported their desire to marry and wanted to be part of a "normal" family. Accordingly the restriction did not serve the purpose of protecting the integrity of the family or the welfare of any minor children and in fact was having a detrimental effect on W.The prohibition in fact only prevented the recognition of a *de facto* reality. While the prohibition might have pursued a legitimate aim therefore it had never been, or had ceased to be, capable of, or appropriate for, achieving that aim.

30. As regarded the relevance of the legislative debates on the subject, they pointed out that eighteen years had passed and that social attitudes to marriage and relationships had changed considerably.

2. The Government

31. While the Government accepted that the prohibition on parents-in-law marrying children-in-law constituted a limitation on the "capacity" to marry, they submitted that it was not absolute as a marriage was possible provided both respective former spouses were dead or where permission was granted by way of a personal Act of Parliament. These requirements were proportionate having regard to the complexity of relationships, the harm to others that was potentially involved in such marriages and the requirements of the protection of morals. In this case the marriage would have the effect of making the first applicant step-father of his grandson which situation could well be deeply confusing and disturbing for a child. This was likely frequently to be the case where a parent-in-law married a child-in-law and was therefore an issue of general public importance with wide moral implications.

32. The limitation was, moreover, permissible as one of the "national laws governing the exercise of this right" since it did not impair the very essence of the right and could be justified in the public interest. The aims pursued were the protection of the rights and freedoms of others and the protection of morals and the legislature considered that the restriction was necessary given the risk of such marriages undermining the foundations of the family and altering relationships between affines; public views on the moral limits of permissible relationships within the family and the risk of public outrage; and the role of law in defining and reinforcing family relationships.

33. Furthermore a wide margin of appreciation was to be afforded to States in a matter where there was no consensus amongst member States and where the judgment involved assessing the requirements of the protection of morals. It was generally accepted in the Contracting States that some restrictions between degrees of consanguinity were justified, though rules differed. Similarly, most States had at some time restricted marriage between relationships of affinity. A considerable number of other countries maintained an absolute or conditional prohibition on such marriages (as far as they could establish some 21 Contracting States). The national authorities were in the best position to make the assessment and that had been carried out in the United Kingdom in 1986 when the matter was fully debated. Different ethical and moral considerations were found to apply at that time in distinguishing the applicants' situation from that of step-parents and step-children, brothers-in-law and sisters-in-law etc.

B. The Court's assessment

34. Article 12 secures the fundamental right of a man and woman to marry and to found a family. The exercise of the right to marry gives rise to social, personal and legal consequences. It is subject to the national laws of the Contracting States but the limitations thereby introduced must not restrict or reduce the right in such a way or to such an extent that the very essence of the right is impaired (see *Rees v. the United Kingdom*, judgment of 17

October 1986, Series A no. 106, § 50; *F. v. Switzerland*, judgment of 18 December 1987, Series A no. 128, § 32).

35. In the present case, the applicants live together in a permanent and longstanding relationship but are unable to obtain the legal and social recognition of that relationship by marrying due to the bar on the marriage between parents-in-law and children-in-law. That the marriage could take place if both their former spouses died, a hypothetical situation impossible to foretell and on the whole unlikely as children tend to outlive their parents, does not remove the impairment of the essence of their right. Nor does the possibility of applying to Parliament. This is an exceptional and relatively costly procedure which is at the total discretion of the legislative body and subject to no discernable rules or precedent.

36. Article 12 expressly provides for regulation of marriage by national law and given the sensitive moral choices concerned and the importance to be attached to the protection of children and the fostering of secure family environments, this Court must not rush to substitute its own judgment in place of the authorities who are best placed to assess and respond to the needs of society. It notes that there are a large number of Contracting States which have a similar bar in their law, reflecting apparently similar concerns about allowing marriages of this degree of affinity.

37. The Court must however examine the facts of the case in the context pertaining in the United Kingdom. It observes that this bar on marriage is aimed at protecting the integrity of the family (preventing sexual rivalry between parents and children) and preventing harm to children who may be affected by the changing relationships of the adults around them. These are, without doubt, legitimate aims.

38. Nonetheless, the bar on marriage does not prevent the relationships occurring. This case shows that. There are no incest, or other criminal law, provisions to prevent extra-marital relationships between parents-in-law and children-in-law being established notwithstanding that children may live in these homes. It cannot therefore be said that in the present case the ban on the applicants' marriage prevents any alleged confusion or emotional insecurity to the second applicant's son.

39. As regards the need to protect the family from deleterious influences, the Court notes that the majority of the Group in the House of Lords reporting on the possible amendments to the law had taken the view that the bar should be lifted as it was based on tradition and no justification had been shown to exist. That the view of the minority, who considered that the bar remained necessary to prevent unhealthy internal family dynamics, prevailed shows that opinions in this area are divided. Further, the significance that the Court would otherwise attach to the legislature's consideration of the matter is outweighed by one important factor.

40. Under United Kingdom law the bar on a marriage of this degree of affinity is not subject to an absolute prohibition. Marriages can take place, pursuant to a personal Act of Parliament. From the information before the Court, it transpires that individuals in a similar situation to these applicants have been permitted to marry: in the *Monk* case (cited at paragraph 21 above), where there were also children in the household, it was declared that the impediment placed on the marriage served no useful purpose of public policy. The inconsistency between the stated aims of the incapacity and the waiver applied in some cases undermines the rationality and logic of the measure. The Government have argued that the general rule remains valid as the Parliamentary procedure provides a means of ensuring that exceptions are only made where no harm will ensue. The Court would only comment that there is no indication of any detailed investigation into family circumstances in the Parliamentary procedure and that in any event a cumbersome and expensive vetting process of this kind would not appear to offer a practically accessible or effective mechanism for individuals to vindicate their rights. It would also view with reservation a system that would require a person of full age in possession of his or her mental faculties to submit to a

potentially intrusive investigation to ascertain whether it is suitable for them to marry (see, *mutatis mutandis*, *F. v. Switzerland*, cited above, §§ 35-37).

41. The Court concludes that there has been, in the circumstances of this case, a violation of Article 12 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 12

42. Article 14 provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

43. Given its finding of a violation of Article 12 above, the Court finds no separate issue arising under Article 14 of the Convention in conjunction with Article 12.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

(…)