



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

FIRST SECTION

CASE OF VAGDALT v. HUNGARY

(Application no. 9525/19)

JUDGMENT

Art 8 • Positive obligations • Family life • Applicant's inability to contest the declaration of paternity in respect of his biological child made by the mother's husband and to establish his own paternity • Careful balance of relevant factors and detailed reasons • Conducting paternity proceedings served the child's best interests • In case-circumstances little regard given to practical application of relevant domestic law safeguards in respect of applicant • Authorities' handling of the case did not ensure that his rights and interests were given due consideration • Civil action declared time-barred owing to State-appointed guardian's failure to pursue necessary legal avenues in good time, depriving the applicant of the opportunity to establish a legal relationship with his child • Delays in proceedings ultimately extinguished any prospect of their successful completion • Numerous remittals setting aside previous decisions that were incompatible with the case's factual background

Prepared by the Registry. Does not bind the Court.

STRASBOURG

7 March 2024

FINAL

07/06/2024

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Vagdalt v. Hungary,

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

Marko Bošnjak, *President*,

Alena Poláčková,

Krzysztof Wojtyczek,

Lətif Hüseynov,

Péter Paczolay,

Ivana Jelić,

Gilberto Felici, *judges*,

and Ilse Freiwirth, *Section Registrar*,

Having regard to:

the application (no. 9525/19) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Hungarian national, Mr István Vagdalt (“the applicant”), on 6 February 2019;

the decision to give notice to the Hungarian Government (“the Government”) of the complaint concerning Article 8 of the Convention and to declare the remainder of the application inadmissible;

the parties’ observations;

the decision of 11 October 2022 to reject the unilateral declaration presented by the Government on 26 September 2021;

Having deliberated in private on 6 February 2024,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns the applicant’s inability to have his paternity recognised in respect of his minor daughter. He alleged a violation of Article 8 of the Convention.

THE FACTS

2. The applicant was born in 1961 and lives in Répcelak. He was represented by Mr A. Cech, a lawyer practising in Budapest.

3. The Government were represented by their Agent, Mr Z. Tallódi, of the Ministry of Justice.

THE CIRCUMSTANCES OF THE CASE

4. The facts of the case, as submitted by the applicant, may be summarised as follows.

5. Between 2000 and 2005 the applicant had an extramarital relationship with E.R., who at the time was married to Cs.H. On 27 September 2002 E.R. gave birth to a girl, C.

6. C. was entered in the birth register as the daughter of E.R. and her husband, Cs.H., pursuant to section 35 of Act no. IV of 1952 on marriage, family and guardianship, as in force at the material time (hereinafter “the old Family Act”- see paragraph 35 below). That provision laid down the legal presumption that a child born in wedlock had been fathered by the mother’s husband.

7. The applicant had regular contact with C. until 2005, when the relationship between him and E.R. ended.

A. First set of proceedings for the rebuttal of Cs.H.’s paternity

8. Since by law the applicant was not entitled to initiate proceedings in his own name, on 8 May 2006 he asked the Guardianship Authority to appoint a guardian *ad litem* for C. so that the guardian could bring an action with a view to rebutting Cs.H.’s paternity.

9. The applicant’s request was dismissed by the administrative authorities on the grounds that C.’s family status was settled, and it was not in the child’s best interests to rebut Cs.H.’s paternity.

10. In the course of the judicial review proceedings, the Supreme Court reversed that decision and remitted the case to the Guardianship Authority.

11. On 12 August 2008, in the resumed administrative proceedings, the second-instance Guardianship Authority appointed a guardian *ad litem* for C. with a view to initiating proceedings for clarification of the child’s family status. The Guardianship Authority found, relying on the expert psychologist opinions, that the child had emotional attachment to the applicant and was aware that the applicant considered himself to be her father. The fact that the relationship between the applicant and the mother deteriorated had negative effects on C., and the uncertainty about her origins could negatively influence her personal development. According to the expert opinions it was in the child’s best interests to clarify these uncertainties. The Guardianship Authority endorsed these conclusions and held that the healthy development of the child required the clarification of her origins, in line with section 1 § 2 of the Family Act (see paragraph 35 below).

12. Both Cs.H. and E.R. requested a judicial review of that decision. The applicant was allowed to join the proceedings as an intervener on the side of the Guardianship Authority.

13. The Veszprém County Regional Court dismissed the action of Cs.H. and E.R. on 3 March 2009. It had regard to the fact that C. lived in a stable family environment and the dissolution of her family could have a traumatising effect on the child. However, there were factual elements substantiating the applicant’s assertion that he was the child’s father and C.

was aware of the uncertainties regarding her family status. The court found that the constant conflicts and contradictions were damaging to the child, and it was necessary to clarify who her father was.

14. Cs.H. and E.R. lodged a petition for review with the Supreme Court. By its judgment of 26 January 2010, the Supreme Court upheld the administrative decision. It explained that under the Family Act proceedings to clarify a child's family status could only be initiated in exceptional circumstances by a guardian *ad litem*, if the proceedings were in the child's best interest. The Supreme Court pointed out that it was established that conducting those proceedings in the present case was in C.'s best interest.

15. In parallel, on 2 December 2008 the guardian *ad litem* appointed by the Guardianship Authority brought an action in the Sopron District Court, seeking the rebuttal of Cs.H.'s paternity. The applicant participated in the proceedings as a witness.

16. On the basis of a DNA test proving that the applicant was the biological father of C., the Sopron District Court annulled Cs.H.'s paternity and ordered the deletion of his name from the civil status register as C.'s father on 22 November 2010. The decision was upheld on appeal by the Győr-Moson-Sopron County Regional Court on 13 April 2011. Prompted by that judgment, the Sopron authority responsible for civil status matters deleted Cs.H.'s name from the civil status register as the father of C.

17. On 13 May 2011 the applicant initiated administrative proceedings for the settlement of the child's family status (*gyermek családi jogállásának rendezése iránti eljárás*).

18. On 27 July 2011 the Zalaegerszeg Guardianship Authority discontinued the proceedings, since at that point the paternity of C. had been clarified (see paragraph 20 below). That decision was upheld by the second-instance administrative authority on 23 September 2011 and by the Zalaegerszeg High Court on 13 January 2012. The applicant lodged a petition for review, which was dismissed by the *Kúria* without any examination on the merits on the grounds that no review lay against decisions concerning the discontinuation of proceedings.

B. Declarations of paternity

19. On 23 May 2011 the applicant made a declaration of paternity in respect of C. at the Sopron registry office. In the absence of the mother's consent, the applicant was not registered as C.'s father in the civil status register (see paragraph 35 below). Following the exclusion of the Sopron authorities from the proceedings on account of bias, on 1 June 2011 the applicant reiterated his declaration at the Fertőd registry office, which had been designated to conduct the proceedings.

20. On 3 June 2011 Cs.H. also made a declaration of paternity in respect of C., with the consent of E.R., before the Sopron notary public. Apparently

on account of the exclusion of the Sopron authorities, the Fertőd registry office was designated to conduct those proceedings. On 7 July 2011 the Fertőd registrar entered Cs.H. as C.'s father in the register again. Since none of those measures constituted an administrative decision, the applicant had no legal avenue to challenge them, and his complaints in that regard were dismissed.

21. The applicant's subsequent request to the Győr-Moson-Sopron County regional public prosecutor's office to challenge Cs.H.'s declaration of paternity was dismissed on 9 March 2016 for lack of any appearance of abuse. On 9 May 2016 the applicant was informed by the Chief Prosecutor's Office that there was no legal avenue to review that decision.

22. On 13 July 2011 the applicant lodged a criminal complaint with the Sopron police department, alleging that Cs.H.'s declaration of paternity of 3 June 2011 (see paragraph 20 above) constituted forgery of public documents.

23. The police discontinued the investigation, finding that the impugned conduct did not constitute a criminal offence. It held that, according to case-law, the registrar had not been obliged to examine the facts surrounding the child's biological origins. Consequently, the declaration of paternity was valid even if it was obvious that the child had not been the biological child of the declarant. On 9 March 2012 the Sopron district public prosecutor's office upheld the decision.

24. On 8 May 2012 the Sopron district public prosecutor's office dismissed the applicant's complaint concerning the alleged abuse of office by the registrar.

C. Proceedings to establish the applicant's paternity

25. On 4 November 2011 the applicant asked the Sopron County Guardianship Authority to enquire whether the modification of C.'s family status was in the child's best interests. The Zalaegerszeg Guardianship Authority, designated to conduct the proceedings, dismissed the request on 31 January 2012, stating that the child lived in a stable family environment and that a change in her family status would not be in her best interests; consequently, no proceedings were to be conducted in that regard. That decision was overturned by the second-instance authority, and the case was remitted to the first-instance authority.

26. The Nagykanizsa Guardianship Authority, designated to conduct the resumed first-instance proceedings, found on 21 November 2012 that the proceedings would be in the child's interests and appointed a guardian *ad litem* for C. who brought a civil action challenging Cs.H.'s paternity in the Győr District Court. The Guardianship Authority considered that although C. lived in emotionally and financially adequate circumstances, the contradiction and troubling information about her origins had a negative

effect on her psyche and gravely endangered her emotional development. The child was aware of the secrets concerning her family status and was therefore confused, especially since until the age of three, she had been brought up with the idea that the applicant was her father.

27. The decision was upheld on appeal by the Zala County Guardianship Authority. The decision of the second-instance authority was set aside in the course of the judicial review proceedings on 18 September 2013 by the Zalaegerszeg Administrative and Labour Court, and the case was again remitted to the first-instance administrative authority. In the light of the court's judgment, the Guardianship Authority instructed the guardian *ad litem* to withdraw his civil action.

28. The applicant requested a review of the court's decision before the *Kúria*. On 28 May 2014 the *Kúria* found for the applicant and upheld the second-instance administrative decision, finding that it was in the child's best interests that her biological origins be clarified and that proceedings be conducted in that regard.

29. On the basis of the *Kúria*'s decision, on 18 August 2014 the Nagykanizsa Guardianship Authority appointed a guardian *ad litem* with a view to instituting proceedings for the annulment of Cs.H.'s paternity and the establishment of the applicant's paternity.

30. On 28 May 2015 the guardian *ad litem* instituted proceedings with a view to establishing the applicant's paternity. The guardian did not institute proceedings against Cs.H. to challenge his paternity.

31. On 24 July 2015 the Sárvár District Court declared the applicant to be C.'s father. Following an appeal brought by E.R. as intervener, the Szombathely High Court overturned the first-instance decision. It dismissed the action and discontinued the proceedings, finding that the paternal status had been established on the basis of the declaration of paternity made by Cs.H. on 3 June 2011 (see paragraph 20 above). Proceedings to establish the paternity of the child could only be initiated if the paternal status was vacant. In response to the applicant's arguments, the second-instance court pointed out that – despite the clear mandate from the Guardianship Authority on 18 August 2014 (see paragraph 29 above) – the guardian *ad litem* had failed to initiate proceedings against Cs.H. for the annulment of his paternity, and thus the question could not be examined in the proceedings before it. The *Kúria* upheld the decision on 27 January 2017. The Constitutional Court dismissed a constitutional complaint by the applicant on 25 September 2018 on the grounds that no constitutional complaint was available against the court decisions in question.

D. Second set of proceedings for the rebuttal of Cs.H.'s paternity

32. On 31 March 2017 the guardian *ad litem*, representing C., instituted proceedings against Cs.H. for the annulment of the latter's paternity. The applicant was not a party to those proceedings.

33. On 14 February 2018 the Veszprém District Court dismissed the action as time-barred. It held that following the entry into force on 15 March 2014 of Act no. V of 2013 on the Civil Code (hereinafter "the new Civil Code"), repealing the old Family Act, proceedings for the annulment of paternity could be lodged by a minor child either before he or she reached the age of three years, or, if the child gained knowledge of the reasons for challenging paternity subsequently, within one year following the date when he or she learned of those facts. In the court's view, since C. was the claimant in the proceedings, the starting-point of the one-year time-limit had been 18 August 2014, when the Guardianship Authority had appointed the guardian *ad litem* (see paragraph 29 above). Therefore, the action of 31 March 2017 was time-barred. The court noted that the proceedings regarding the establishment of the applicant's paternity in respect of C. had not interrupted the running of the one-year time-limit since they had had a different subject matter. The Veszprém High Court upheld that decision on 26 June 2018.

E. Subsequent proceedings

34. In 2018 the applicant initiated civil proceedings against C. and E.R. for the establishment of his paternity status. At the date of the latest information available to the Court (17 February 2023), those proceedings were still pending.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

35. The old Family Act (see paragraph 6 above), as in force at the material time, provided as follows:

Section 1

"...

(2) In the application of this Act the minor child's interests shall always be taken into account and his or her rights shall be safeguarded."

Section 35

"(1) The man who was living in matrimonial union with the mother during the whole or a part of the period starting from the time of the child's conception until the birth of the child shall be considered the father of the child. Any invalidity of marriage shall be without prejudice to the presumption of paternity.

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...”

Section 37

“ ...

(2) The man from whom the child is descended may, from the date of conception, acknowledge the child as his own by a declaration of paternity with full legal effect if

(a) no other man is to be regarded in law as the father, and

(b) the child is at least sixteen years younger than the person making the declaration, who must himself have attained sixteen years of age.

...

(4) For a declaration of paternity to have full effect, the consent of the mother, the legal representative of the minor child and, if the child is older than fourteen years, the consent of the child shall be required. If the legal representative of the child is permanently hindered in giving his or her consent, the guardianship authority should give its consent to the declaration.”

Section 43

“(1) The presumption of paternity may be challenged on the grounds that the person to be considered the father under the presumption had no sexual intercourse with the mother at the time of conception or it is otherwise impossible under the circumstances that he fathered the child.

(2) If the presumption of paternity is based on a declaration of paternity with full effect, the presumption can also be challenged on the grounds that the declaration, in the absence of fulfilling the legal conditions, is without full effect.

(3) The presumption of paternity may be challenged by

(a) the child,

(b) the presumed father,

(c) after the death of the child, the child’s descendant.

...

(6) The action for rebutting the presumption of paternity may be brought by the child within one year after the child has reached the age of majority. The presumption of paternity may be challenged by other persons eligible to do so within one year after learning of the birth of the child. If the person entitled to challenge the presumption becomes aware of a fact serving as grounds for challenging the presumption after the expiry of the time-limit applicable to him, he may challenge the presumption of paternity within one year from becoming aware of that fact.”

Section 44

“(1) A judicial declaration of paternity, maternity and the effect of subsequent marriage may be requested by means of an action; and the presumption of paternity may be challenged by means of an action. The action shall be brought in person by the entitled person.

...

(4) Before the institution of an action challenging the presumption of paternity, the guardianship authority shall, in the case of a minor lacking capacity, hear the mother and the presumed father, except where there is an impediment beyond its control. The guardianship authority shall not give its approval to the initiation of proceedings unless the establishment of the [child's biological] origins and the settling of his or her family status are in the interests of the minor. If there is a dispute between the mother and the presumed father about the custody of the child, the guardianship authority shall give its approval only in exceptionally justified cases.

..."

36. The relevant provisions of the new Civil Code, which entered into force on 15 March 2014, provide as follows:

Chapter X
Contested presumption of paternity
Article 4:111

"(1) An action for challenging the presumption of paternity may be brought by the minor child and the mother subject to the guardianship authority's consent, before the child reaches the age of three years. Other entitled parties may challenge the presumption of paternity within a period of one year from the date when the presumption of paternity is established.

...

(4) Where an entitled party gained knowledge of any fact justifying a challenge only later, he or she may challenge the presumption of paternity within a period of one year from the date when he or she learned of that fact."

37. Act no. CLXXVII of 2013 on the transitional and authorising provisions relating to the entry into force of Act no. V of 2013 on the Civil Code provided as follows:

Section 23

"Unless otherwise provided by this Act, the provisions of the Civil Code shall apply to family-law relationships existing at the time of the entry into force of the Civil Code, and to facts and declarations of rights made in connection with such relationships after the entry into force of the Civil Code."

9. Relationship by descent
(Related to Articles 4:107-4:114 of the Civil Code)
Section 32

"The provisions of the Civil Code on contesting paternity shall apply if the action to contest paternity was brought after the entry into force of the Civil Code."

(Related to Article 4:111 of the Civil Code)
Section 33

"If the status of paternity was acquired before the entry into force of the Civil Code, the time-limits provided for in Act no. IV of 1952 on marriage, family and guardianship ... shall apply to challenges to the presumption of paternity until 14 March 2017."

38. Government Decree no. 149/1997 (IX. 10.) on child custody boards, child protection procedure and child custody board procedure provides as follows:

Article 64

“(1) In order to initiate an action for settling the family status of a child, the guardianship authority shall appoint a guardian *ad litem* for the child’s statutory representation. The appointment of a guardian *ad litem* may be requested by the parent, the guardian or the child where he or she has attained the age of 14, but the child custody board may of its own motion also decide on the appointment. ...

(4) In determining whether or not to give approval for the initiation of an action for settling the child’s family status, the guardianship authority shall examine whether the establishment of the [biological] origins and the settling of the family status is in the interests of the child or the person placed under guardianship.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

39. The applicant complained that he had not been able to have his paternity recognised in respect of his daughter, because the domestic authorities had been inefficient in conducting the proceedings. He relied on Article 8 of the Convention, which provides:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Admissibility

40. As regards paternity proceedings, the Court has held on numerous occasions that such proceedings do fall within the scope of Article 8 (see *Mikulić v. Croatia*, no. 53176/99, § 51, ECHR 2002-I), which encompasses important aspects of personal identity (see *Novotný v. the Czech Republic*, no. 16314/13, § 41, 7 June 2018).

41. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. *The parties' observations*

42. The applicant asserted that the set of decisions rejecting his requests to legally establish his paternity in respect of C., and the impossibility for him to challenge the declaration of paternity made by Cs.H., had interfered with his right to respect for his family and private life.

43. He pointed out that a final court judgment had ruled out that Cs.H. was C.'s biological father, but the domestic authorities had failed to abide by that decision. Thus, the interference with his right to family life had not been "in accordance with the law".

44. Moreover, the authorities had failed to take all necessary measures they could reasonably be expected to take in the proceedings for the registration of paternity. First, they had not implemented a final judicial decision and had not registered him as C.'s father. Second, they had re-registered Cs.H. as C.'s father on the basis of his evidently false declaration of paternity, since such a declaration could only be made by the biological father of a child. Third, the authorities had acted in bad faith, and fourth, they had created a situation where the biological facts could not prevail over a legal presumption, even if that legal presumption flew in the face of established facts.

45. He also put forward that he had no legal means to challenge Cs.H.'s paternity, and his own declaration of paternity had been dependent on the mother's approval. The lack of access to proceedings to establish his paternity was in itself to be viewed as a violation of Article 8. Moreover, there existed no guidance on how the relevant authorities were to exercise their discretionary powers when deciding on the initiation of paternity proceedings.

46. Furthermore, the conduct of the guardians *ad litem* appointed to initiate proceedings had been deficient. As for the judicial decisions, the applicant argued that the courts concerned had never carried out a proper balancing of the interests at stake but had dismissed all actions to clarify the child's family status by invoking Cs.H.'s declaration of paternity.

47. The Government maintained that having regard to the margin of appreciation accorded to the member States in facilitating the reunion between a parent and his or her child, there had been no violation of Article 8 of the Convention in the applicant's case. The domestic authorities had done everything within their power to register the applicant's paternity.

48. The Government pointed out that if paternity had been established before the entry into force of the new Civil Code, the old Family Act was applicable for actions challenging the presumption of paternity. Under the system of the old Family Act, a declaration of paternity by a third person prevailed over paternity established by a judicial decision. A declaration of paternity made with the consent of the mother took full effect without any

further judicial decision, even when judicial proceedings were still pending. Once the status of the father was completed in the register through a declaration of paternity, no further declarations could be made in respect of the same child.

49. The new Civil Code, which had entered into force on 15 March 2014, had amended those rules in that a paternity declaration could only take full effect if no judicial proceedings were pending concerning the child's parentage. If the applicant's case had fallen under the new Civil Code, his paternity claim would not have been declared inadmissible.

2. *The Court's assessment*

50. In the present case, where the applicant complained that it was impossible to contest the declaration of paternity made by another man and to establish his own paternity in respect of C., who had been found to be his biological child, the Court finds it appropriate to examine the complaint from the angle of the State's positive obligations under Article 8 of the Convention (see *Koychev v. Bulgaria*, no. 32495/15, § 55, 13 October 2020).

51. The Court considers that it is not its role to decide *in abstracto* the compatibility with Article 8 of the Convention of the choices of the Hungarian legislature and to rule on whether and under what conditions a person claiming to be the biological father of a child may be authorised to challenge the legal presumption of the husband's paternity. It must determine whether a fair balance has been struck in the present case between the competing interests at stake and whether the decision-making process taken as a whole was fair and provided the applicant with the requisite protection of his interests safeguarded by Article 8.

52. The Court first notes that between 2006 and 2018 a number of proceedings took place with a view to clarifying the paternal status in respect of C. It considers that these proceedings are interrelated in the assessment of whether the domestic authorities secured to the applicant the respect for his family life to which he is entitled under the Convention.

53. The Court observes that Hungarian law did not provide for the possibility for a man who claimed to be the biological father of a child whose parentage had been established, either by legal presumption or by recognition, to directly challenge paternity. Such a procedure could be initiated by a guardian *ad litem* if the Guardianship Authority assessed that it was in the best interests of the child to learn about his or her parentage and to clarify his or her family status. Thus, the domestic authorities enjoyed discretionary powers, designed to safeguard the best interests of the child and also to balance the interests of both the child and the putative biological father. The Court notes that it has already held that such discretionary powers in the field of paternity action as provided for by the old Hungarian Family Act were not in themselves irreconcilable with the guarantees contained in Article 8 (see *Krisztián Barnabás Tóth v. Hungary*, no. 48494/06, § 33, 12 February 2013).

54. Moreover, the Court has previously examined a number of cases where the applicants sought to either contest or claim paternity, which were rejected by the relevant national authorities after consideration of the factual circumstances and following a balancing exercise which, however succinct, accounted for the different interests involved paying particular attention to the needs of the child (see, for example, *ibid.*, §§ 33–37, and *A.L. v. Poland*, no. 28609/08, §§ 75–78, 18 February 2014). In other cases the Court has found that rejections of the applicants’ paternity-related claims did not breach the required fair balance under Article 8 of the Convention because they had been based on considerations such as the child having the benefit of previously established origin, the need to preserve stability and continuity in the children’s relationships where there was an established social reality in which they thrived, or the fact that granting such requests would not have been in the child’s best interests for other reasons (see *Kautzor v. Germany*, no. 23338/09, § 77, 22 March 2012, and *Doktorov v. Bulgaria*, no. 15074/08, § 31, 5 April 2018).

55. However, the present case is to be distinguished from the above described situations. The Court cannot overlook the fact that in the instant case the applicant’s view of what would be in the best interests of the child was supported by the domestic authorities. Both the Guardianship Authority and the domestic courts examined in detail whether conducting paternity proceedings was in the child’s best interest before allowing for the initiation of those proceedings.

56. The Court finds that the domestic authorities took into account the relevant circumstances, including the child’s family situation and environment, her relationship with the applicant, and her interests in having her family status clarified. They carefully balanced those elements, provided detailed reasons for their findings, and concluded that the uncertainty concerning her origins was harmful and negatively affected C.’s development (see 11, 13, 14 above and 61 below). The Court sees no reason to question the assertion of the domestic authorities that conducting the paternity proceedings served the child’s best interests. It also notes that it has previously acknowledged that a person has a vital interest, protected by the Convention, in receiving the information necessary to uncover the truth about an important aspect of his or her personal identity and to eliminate any uncertainty in this respect (see *Odièvre v. France* [GC], no. 42326/98, § 42, ECHR 2003-III, and *Scalzo v. Italy*, no. 8790/21, § 58, 6 December 2022).

57. Thus, what remains to be ascertained is whether the way in which the domestic authorities conducted the proceedings aiming to clarify the paternal status in respect of C. provided the applicant with the possibility of having his case heard and his individual circumstances considered.

58. As regards the manner in which the paternity proceedings were conducted the Court observes that once the parentage of C. had been established by a DNA test, the applicant sought to have his paternity

registered without delay. Within approximately a month from when the relevant information was established by a final court judgment, he made a declaration of paternity in respect of C. However, the domestic legislation did not allow him to do so without the consent of the mother, even if this would have been in the best interests of the child. No legal avenue capable of remedying the mother's refusal was available to the applicant either. On the contrary, the authorities registered Cs.H. as the child's father anew, even though his declaration of paternity flew in the face of established facts. The Court takes note of the conclusion reached by the prosecutor's office that under Hungarian law it was not up to the registrar to verify the child's parentage when registering Cs.H. as her father again. However, it cannot disregard the fact that the domestic authorities must have been fully aware of the final court decision concerning the child's biological origins and the fact that the applicant himself had made a declaration of paternity in respect of C., but they chose to overlook those circumstances.

59. That approach also effectively precluded any further opportunity for the applicant to have his paternity recognised despite the established biological fact that he was the child's father. First, he was prevented from initiating administrative proceedings for the settlement of the child's family status, since the paternal status in respect of C. had been completed in the register. Second, his request to the Guardianship Authority to bring an action to establish his paternity was unable to yield any results either.

60. As regards this second set of proceedings, the Court notes that in the applicant's case, his power to establish a relationship with his child was circumscribed by section 43 of the old Family Act. While that provision was capable of securing the interests of presumed fathers, it had no regard for individuals who, as in the applicant's situation, were proven to be the biological father of a child whose paternal status had not been left vacant in the register (see paragraphs 16 and 20 above). It was only if the Guardianship Authority found that it was in the child's best interests to clarify his or her family status that a guardian *ad litem* was appointed to initiate proceedings in the child's name.

61. The Court observes that despite previously concluding that the clarification of the child's parentage had been in C.'s interests (see paragraphs 9-14 above), the domestic authorities carried out a fresh assessment of the matter (see paragraphs 25-28 above). As noted above, the domestic authorities cannot be criticised for considering whether the child's interests could prevail over those of the applicant before taking any action (see paragraph 53 above) as these proceedings were clearly designed to balance the interests of the child against those of the biological father. The Court emphasises in this respect that the new evaluation of the child's best interests yielded the same result as before, the domestic authorities concluding that the uncertainty and conflicting information about her origins

had a negative impact on C.'s psyche and emotional development, necessitating the clarification of her family status.

62. Nonetheless, the Court notes with concern that it took three years for the domestic authorities to settle the question of the child's best interests anew and appoint and instruct a guardian *ad litem* representing the child's interests to initiate proceedings for the annulment of Cs.H.'s paternity and the establishment of the applicant's paternity (see paragraph 29 above).

63. Furthermore, the guardian ought to have brought an action challenging Cs.H.'s paternity, but failed to do so, disregarding the instructions of the Guardianship Authority (see paragraph 30 above). Owing to that omission, his action seeking to register the applicant's paternity was bound to be unsuccessful and indeed was dismissed on the grounds that the paternal status in respect of the child had been completed in the civil status register (see paragraph 31 above).

64. In this connection, the Court notes that the courts reiterated in their decisions that the mere fact of legal recognition by another man, Cs.H., was sufficient to refuse the request to have the applicant's biological paternity recognised, irrespective of the actual circumstances of Cs.H.'s declaration of paternity. The courts did not consider the fact that the paternity of C. had been determined by a final court judgment, and should not have been called into question.

65. The Court also observes that a further attempt to remedy the guardian's omission proved to be futile since, owing to the statutory time-limit for challenging the presumed father's paternity, the guardian's new action challenging Cs.H.'s paternity, brought in the name of C., was declared time-barred, without any examination of the particular circumstances of the case (see paragraph 33 above).

66. As regards the effect of the statutory time-limit in the applicant's case, the Court notes that it has previously distinguished between situations in which the time-limits provided for by the domestic law to bring an action to establish paternity were of an absolute and rigid nature, and those where domestic law allowed those time-limits to be extended where the relevant facts were not known before the expiry (see *Lavanchy v. Switzerland*, no. 69997/17, § 34, 19 October 2021). In principle, both section 43(6) of the old Family Act and Article 4:111 of the new Civil Code fall within the second scenario, since they allow the presumption of paternity to be challenged within one year from the date the person concerned learned of the facts substantiating such a challenge. However, since those provisions did not allow for any other justification for a missed deadline, they did not cover the applicant's situation, where the civil action was declared time-barred owing to an omission on the part of a State-appointed guardian.

67. The Court finds it necessary to reiterate in this connection that the responsibility of a State under the Convention may arise in respect of the acts of all its organs, agents and servants. It is satisfied that this consideration

applies to the guardian *ad litem* appointed to represent C. It considers that this guardian should have pursued all the legal avenues necessary to settle C.'s family status. By not doing so in good time, that is, before the expiry of the relevant time-limit, he effectively deprived the applicant of the opportunity to establish a legal relationship with his child.

68. In sum, the Court acknowledges that the domestic legislation contained some safeguards allowing for the examination of all interests before any decision to initiate proceedings that could affect the family status of a child.

69. However, in the particular circumstances of the present case, little heed was paid to the practical application of those safeguards in respect of the applicant and it does not seem that the authorities' handling of his case ensured that his rights and interests were given due consideration. The Court further notes with concern the number of remittals setting aside previous conclusions, decisions that were clearly incompatible with the factual background of the particular case and, lastly, the conduct of the guardian *ad litem* in disregarding earlier instructions, especially in the light of the lack of any directly accessible procedure by which the applicant could seek to have his legal paternity established. Meanwhile, the delays in the proceedings inevitably reduced and ultimately extinguished any prospect of their successful completion.

70. Having examined the manner in which all those elements taken together affected the applicant's situation, the Court concludes that, even having regard to the margin of appreciation left to the State, it failed to secure to the applicant the respect for his family life to which he is entitled under the Convention (see, *mutatis mutandis*, *Róžański v. Poland*, no. 55339/00, § 79, 18 May 2006).

71. There has therefore been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

73. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

74. The Government found the applicant's claim excessive.

75. The Court awards the applicant EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

76. The applicant also claimed EUR 3,574 for the costs and expenses incurred before the domestic courts. He submitted that he could not substantiate all costs and expenses, since they had been incurred in proceedings that had spanned almost thirteen years. The applicant also claimed EUR 8,750 plus value-added tax for expenses incurred before the Court. This sum corresponded to fifty-eight hours of legal work at an hourly rate of EUR 150 and three hours of paralegal work at an hourly rate of EUR 50.

77. The Government contested these claims.

78. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 10,000 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

VAGDALT v. HUNGARY JUDGMENT

Done in English, and notified in writing on 7 March 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth
Registrar

Marko Bošnjak
President