



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

SECOND SECTION

**CASE OF YOUSEF v. THE NETHERLANDS**

*(Application no. 33711/96)*

**FINAL**

*05/02/2003*

JUDGMENT

STRASBOURG

5 November 2002



**In the case of Yousef v. the Netherlands,**

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

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr GAUKUR JÖRUNDSSON,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs W. THOMASSEN,

Mr M. UGREKHELIDZE, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 8 October 2002,

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

**PROCEDURE**

1. The case originated in an application (no. 33711/96) against the Kingdom of the Netherlands lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Mr Ramzi Samir Yousef (“the applicant”), then an Egyptian national, on 5 June 1996.

2. The applicant was initially represented before the Court by Mr J.H.F. Schultz van Haegen and later by Mr O.C. van Angeren, both lawyers practising in The Hague (Netherlands). The Netherlands Government (“the Government”) were represented by their Agents, Mr R.A.A. Böcker and Ms J. Schukking, of the Netherlands Ministry of Foreign Affairs.

3. The applicant alleged that he was a victim of a violation of Article 8 of the Convention in that he was prevented from recognising a child of whom he was the biological father.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the First 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.

6. On 5 September 2000 the Chamber declared the application admissible.

7. Neither the applicant nor the Government filed observations on the merits.

8. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

9. The applicant, born in 1959, was an Egyptian national at the time of the events complained of. He has since obtained Netherlands nationality and, as far as the Court is aware, is at present living in the Netherlands.

#### A. Factual background

10. The applicant first arrived in the Netherlands in 1985. That year he met Ms R., a Netherlands national. On 16 January 1987 a daughter, S., was born to the couple, who were not married and were not living together. By a decision of 12 February 1987, the Deventer District Court judge (*kantonrechter*) appointed the applicant as the auxiliary guardian (*toeziend voogd*) of S., Ms R. as her mother *ipso jure* being her guardian (*voogdes*).

11. At some time in or around August 1987, the applicant moved in with Ms R. and their daughter in the house of Ms R.'s mother. They lived together for about a year.

12. The applicant went to the Middle East in July 1988 and stayed there for some two and a half years. During this time, contact between the applicant on the one hand and Ms R. and S. on the other was limited to the exchange of some letters.

13. The applicant returned to the Netherlands in early 1991. The applicant states that he saw S. every two weeks until 1993. Despite the applicant's repeated requests, Ms R. refused to give him permission to recognise (*erkennen*) S.

14. Ms R. contracted a terminal illness. On 9 June 1993 she made a will in which she expressed the wish that, after her death, her brother Mr H.R. should have guardianship of her daughter, S. In January 1994 the applicant instigated summary injunction proceedings (*kort geding*) before the President of the Zwolle Regional Court (*arrondissementsrechtbank*), seeking an order for Ms R. to give him permission to recognise S. On 25 January 1994 the President gave a judgment refusing to grant the injunction sought. The President considered that Ms R. had not abused her power to withhold permission to the applicant's recognition of S., since the change of surname which such recognition would entail for S. could not be

deemed to be in her best interests. However, the President added by way of *obiter dictum* that it was important for both the applicant and his daughter that contacts between them be continued. The President therefore thought it desirable that S. spend every other weekend with her father.

15. In a further, supplementary will dated 7 February 1994 Ms R. stated that she had agreed with another of her brothers, Mr J.R., that after her death S. would be placed with his family. Ms R. further stated that it was her express wish that the applicant should not visit her daughter as this would seriously disrupt the life of the family in which S. was to be raised. Ms R. also expressed the opinion that it would be contrary to the best interests of her daughter if the applicant were to obtain access to S. According to Ms R., the applicant had no fixed abode, no residence permit, no employment and no financial means; he would only use the care for his daughter as a pretext for obtaining a residence permit in the Netherlands and thus be entitled to social-security benefits. Prior to her illness, the applicant had not shown much interest in S., nor had he contributed financially to S.'s upbringing.

16. Ms R. died on 15 February 1994. In conformity with her wishes, her brother, Mr H.R., was granted guardianship of S. and she was placed in Mr J.R.'s family. The applicant saw S. once every three weeks under an arrangement with the R. family.

17. Following Ms R.'s death, the applicant requested the Deventer Registrar of Births, Deaths and Marriages (*ambtenaar van de burgerlijke stand* – “the Deventer Registrar”) to draw up a deed of recognition and to enter this into the register of births. By a letter of 18 February 1994, the Deventer Registrar notified the applicant of his refusal to do so, being of the opinion that Egyptian law, which did not provide for the recognition of children, applied.

## **B. Proceedings in the Zwolle Regional Court**

18. On 28 February 1994 the applicant lodged a request pursuant to Article 1:29 of the Civil Code (*Burgerlijk Wetboek*) with the Zwolle Regional Court asking that the Deventer Registrar be ordered to draw up the deed of recognition and enter it in the appropriate registers. Although the Regional Court agreed with the applicant that Netherlands law applied, it nevertheless refused to grant the request on 19 October 1994. It considered that, when alive, Ms R. had always withheld her permission for the applicant's recognition of S.; it had not been established that there was family life within the meaning of Article 8 of the Convention; following Ms R.'s death somebody other than the applicant had been granted the guardianship of S.; and S. was, moreover, not living with the applicant.

### C. Proceedings in the Maastricht Regional Court

19. Meanwhile, in June 1994, the applicant requested the Maastricht Regional Court to grant him access to S. every other weekend, as had been recommended by the President of the Zwolle Regional Court. He submitted that Mr H.R. was frustrating his right to regular and undisturbed access to his daughter. At the hearing in those proceedings on 3 October 1994, Mr H.R. and Mr J.R. stated that there was not and never had been family life between the applicant and S.; that the applicant only wanted regular access to S. in order to obtain a residence permit; that S. was settling into her new family; that S. called Mr J.R. “Daddy”; that S. did not enjoy the applicant’s visits; and that she did not trust him. In reply, the applicant stated that S. was very important to him; that the late Ms R. had been heavily influenced by her overbearing mother; that unbeknownst to Ms R.’s mother the applicant had continued the relationship with Ms R. after they had stopped living together; and that it was Ms R.’s mother who had told S. not to call the applicant “Daddy”.

20. At the conclusion of the hearing the Regional Court, being of the opinion that there was “family life” between the applicant and S., decided provisionally that the contacts between the applicant and S. were to continue at the offices of the Child Welfare Board (*Raad voor de Kinderbescherming*), and that it would take a decision based on a report to be drawn up by that organisation.

### D. Proceedings in the Court of Appeal

21. The applicant lodged an appeal with the Court of Appeal (*gerechtshof*) of Arnhem against the decision of the Zwolle Regional Court not to order the Deventer Registrar to draw up a deed of recognition. He argued that Ms R.’s refusal to consent to his recognition of S. no longer had any effect after her death. That being so, there was no call for the courts to go into the question whether or not there existed family life between the applicant and S. Should the Court of Appeal nevertheless be of the opinion that it ought to examine this question and that a balancing exercise as required by Article 8 of the Convention was called for, the applicant submitted that he was the natural father of S.; that not only had there been a meaningful relationship between Ms R. and himself, they had also lived together as a family for some time and they had contributed equally to the care and upbringing of S. The applicant also referred to his request lodged with the Maastricht Regional Court to have his rights of access to S. increased. While he conceded that during the mother’s lifetime an unwanted recognition might have constituted a disproportionate interference with her private and family life, after her death only the interests of the applicant and the child remained to be balanced against each other, and there were no

weighty interests on the side of the child which militated against recognition.

22. The applicant lastly submitted that it had been his desire from the outset to obtain guardianship (*voogdij*) of S. after her mother's death and that S. should live with him. In order for a request for a change of guardianship to stand any chance of success, the applicant ought first to have recognised his daughter. The applicant urged the Court of Appeal to deal with his request speedily as he was being threatened with expulsion, the Deputy Minister of Justice (*Staatssecretaris van Justitie*) not accepting that there was family life between the applicant and S. Recognition would serve to confirm officially the natural ties between father and daughter.

23. At the hearing before the Court of Appeal on 8 December 1994, the applicant submitted, *inter alia*, that he had always done everything possible to ensure S.'s happiness but that Ms R.'s family had never accepted him. However, the relationship between S. and him was very strong.

24. In a decision of 17 January 1995 the Court of Appeal dismissed the applicant's appeal. It held that the explicit refusal of Ms R. to consent to the applicant's recognition of S. had not ceased to have effect after her death, as she had stated in her will that she maintained the refusal which she had considered to be in the best interests of S.

25. The Court of Appeal further found that, even assuming that family life had at one time existed between the applicant and S., that tie had been broken by subsequent events. The contacts which had taken place between the applicant on the one hand and Ms R. and S. on the other had been so sparse and irregular, and so devoid of mutual commitment, that they could no longer be regarded as constituting family life. The Court of Appeal went on to hold, however, that even if it had to be assumed that family life still existed, the interests of the child should be its foremost consideration. These interests would be best served by allowing S. to grow up in the family where she had been placed after the death of her mother and in accordance with her mother's explicit last wishes, and where she received the care she needed. The recognition intended by the applicant was aimed at bringing about a change in this situation and, for that reason, could not be held to be in the best interests of S. The Court of Appeal found that this was all the less so as the applicant had never had the care of S., had not previously indicated that he actually wished to care for her and, in addition, had not substantiated his claim that he would be able to discharge his duty of care in a responsible manner. Moreover, recognition would mean that S. would automatically take the applicant's surname, whereas she now had the same surname as the other members of the family in which she was growing up.

### E. Proceedings in the Supreme Court

26. The applicant lodged an appeal on points of law with the Supreme Court (*Hoge Raad*), arguing, *inter alia*, that the Court of Appeal had been wrong to hold that the refusal of Ms R. to consent to the applicant's recognition of S. could still have effect after her death. Moreover, the relevant legal provisions did not require that, in order for the natural father to recognise a child following the death of the mother, there should be family life between them. In any event, contrary to what the Court of Appeal had found, there was family life between the applicant and S., so that the Court of Appeal's finding on this point was incomprehensible.

27. According to the applicant, the Court of Appeal had also been wrong to hold that it would be in the best interests of S. to be raised in Mr J.R.'s family. The legislature had, on the contrary, deemed that recognition by the natural father would serve a child's interests in a case such as the present where the mother had died. Moreover, recognition as such would not entail any changes in the child's living arrangements. Such changes could only be brought about if the applicant were to file a request for a change in the guardianship arrangements, in which event the interests of the child could be assessed at that time. Finally, the applicant submitted that the Court of Appeal could not have properly assessed what was in the best interests of S. without having sought the opinion of the Child Welfare Board.

28. By a decision of 8 December 1995, the Supreme Court dismissed the appeal on points of law. It agreed with the applicant that Ms R.'s refusal to consent to his recognition of S. – to which she had been entitled, such a right having been provided by law in order to protect the interests of mothers in her position – was no longer valid after her death. The Court of Appeal had given additional reasons for its decision not to order the Deventer Registrar to draw up a deed of recognition, even assuming that family life did exist. This reasoning, in the view of the Supreme Court, was sufficient in itself to support the Court of Appeal's decision. In this regard the Supreme Court pointed out that, as a result of a valid recognition, legally recognised family ties (*familierechtelijke betrekkingen*) would be created between the child and the person who had recognised the child. This far-reaching consequence meant that recognition could affect interests of the child which were protected by Article 8 of the Convention. Although recognition could serve these interests, it could similarly harm them. Article 8 had thus required the Court of Appeal to balance the applicant's interest in having the relationship between himself and S. confirmed as a legally recognised family tie, assuming that this relationship constituted family life, against the interest of the child in continuing to live with the legal family in which she had lived ever since her mother had died, and to keep that family's surname. The Supreme Court found that the Court of Appeal had adequately acquitted itself of this task.

29. Given that the applicant had never made a secret of the fact that he intended to obtain guardianship of S. and to have her live with him, the Court of Appeal had been correct to take into account S.'s interest in not having her residence with Mr J.R.'s family threatened by the outcome of further legal proceedings. Finally, the legal provisions in force had not required the Court of Appeal to seek advice from the Child Welfare Board, and it had been up to the Court of Appeal itself to determine whether or not it needed such advice.

30. During and following the proceedings before the Supreme Court, a change in S.'s living arrangements occurred; the Supreme Court was unable to take these new circumstances into account as, pursuant to Article 419 § 2 of the Code of Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering*), it was bound by the facts as established by the Court of Appeal and contained in the case file.

#### **F. Subsequent developments**

31. In September 1995 S. returned to live with her maternal grandmother. According to the Child Welfare Board, one of the reasons for this was the distress caused to the family of her uncle, Mr J.R., by the applicant's seeking access to S. On 31 January 1996 the Child Welfare Board requested the juvenile judge (*kinderrechter*) of the Amsterdam Regional Court to issue a supervision order (*ondertoezichtstelling*) in respect of S. During a hearing on 21 February 1996, the juvenile judge stated that for the time being it would be best if S. stayed with her grandmother, but that there should be contact between the applicant and S. and that the applicant's future role in the life of S. should be further examined. On 6 March 1996 the juvenile judge issued a supervision order and appointed a family guardian (*gezinsvoogd*).

32. On 6 November 1996 the Deventer Registrar refused to comply with a new request from the applicant to draw up a deed of recognition and enter it in the register of births. The applicant again turned to the Zwolle Regional Court, submitting that the circumstances leading to the rejection of his first request had changed as S. was no longer living with her uncle. He further stated that he was concerned about his daughter's well-being in view of the advanced age of the grandmother and the latter's overbearing character. Moreover, the applicant submitted that he was capable of looking after S. himself.

33. The Regional Court rejected the applicant's request on 26 May 1997. It considered that the change in S.'s living arrangements had been brought about by the juvenile judge and could not be held to be to the detriment of S. Moreover, the persons responsible for the care and upbringing of S. were in receipt of assistance as a result of the supervision order. The change in the living arrangements could therefore not, as such, alter the result in the

balancing exercise that had been carried out by the Arnhem Court of Appeal. Noting that the applicant was still attempting to obtain guardianship of S., the Regional Court finally considered that the recognition of S. by the applicant would not be in her best interests.

34. The applicant did not file an appeal against the Regional Court's decision of 26 May 1997.

35. Following the entry into force of the Law of 6 April 1995, which abolished the institution of auxiliary guardianship, the applicant is no longer S.'s auxiliary guardian.

36. The applicant, who since the events complained of has taken Netherlands nationality, has married another woman by whom he has a son.

## II. RELEVANT DOMESTIC LAW

### A. Family law

#### *1. At the time of the events complained of*

37. A child born out of wedlock had the status of the natural child of its mother. It became the natural child of its father after having been recognised by the latter – the “father”, for the purposes of this provision, being the man who recognised the child, whether or not he was the biological father (Article 1:221 of the Civil Code).

38. A child born out of wedlock automatically had legally recognised family ties with its mother and her relatives. Recognition by the father entailed the creation of a legally recognised family tie between him and the child, as well as between the child and the father's relatives (Article 1:222 of the Civil Code). At the relevant time the surname of such a child was the surname of its father if the latter had recognised the child, and the mother's surname if not (Article 1:5 § 2 of the Civil Code).

39. Recognition of a child could be effected on the birth certificate itself or by a separate deed of recognition drawn up for that purpose by the Registrar of Births, Deaths and Marriages or a notary (Article 1:223 of the Civil Code). A deed of recognition drawn up by the registrar was entered in the register of births (Article 1:21 § 3 of the Civil Code). At the request of an interested party, the regional court could order that a deed be entered in the appropriate registers (Article 1:29 § 1 of the Civil Code).

40. A recognition was invalid if it was done during the mother's lifetime without her prior consent in writing (Article 1:224 § 1 (d) of the Civil Code). However, in view of the right of the father and the child to respect for their “family life”, as guaranteed by Article 8 of the Convention, the Supreme Court construed this provision in such a way that the effective

right of veto which the provision gave the mother could be overridden if she abused it (see, *inter alia*, the Supreme Court's decision of 8 April 1988, *Nederlandse Jurisprudentie* 1989, no. 170).

41. The man who had recognised the child could apply to the district court for guardianship of the child. If a person other than the mother had guardianship, such an application could only be refused if there was reason to fear that the child's interests would be neglected. However, if the mother had guardianship, the application would only be allowed if the district court considered that the child's interests would thus be best served (Article 1:288 of the Civil Code).

42. In proceedings concerning, *inter alia*, parental authority, guardianship and access, the competent court could obtain advice from the Child Welfare Board if it felt that it needed such advice in order to make a proper assessment of the best interests of the child (Article 902a Code of Civil Procedure).

## 2. *The new law*

43. On 1 April 1998 a new Article 1:204 of the Civil Code came into force. It is still provided that, for a man to recognise a child who is not yet 16 years old as his, the prior written permission of the mother is required (Article 1:204 § 1 (c)). If the mother's permission is lacking, it may be replaced by the permission of the regional court (Article 1:204 § 3). However, the man who seeks such permission must be the child's biological father; in addition, recognition must not be detrimental to the mother's relationship with the child or to the child's own interests (*ibid.*). The explanatory memorandum on the bill which eventually led to the enactment of this provision makes it clear that the permission of the regional court is required in all situations where the mother's permission cannot be obtained, including in the event of her death (*Kamerstukken* (Parliamentary Documents) II, 1995/96 session, 24,649 no. 3, p. 10). In addition, the child's written permission is required if he or she has reached the age of 12 (Article 1:204 § 1 (d)).

44. At the same time Article 1:207 was introduced into the Civil Code, pursuant to which a child may request the regional court to issue a judicial declaration of paternity (*gerechtelijke vaststelling van vaderschap*) in order to have a legal tie established between him or her and the biological father. No time-limit applies for lodging such a request.

## **B. Status of the Convention in Netherlands domestic law**

45. The status of the Convention in Netherlands domestic law is regulated by the following provisions of the Netherlands Constitution:

**Article 93**

“Provisions of treaties and of resolutions of international institutions which may be binding on all persons by virtue of their contents shall become binding after they have been published.”

**Article 94**

“Statutory regulations in force within the Kingdom shall not be applicable if such application is in conflict with the provisions of treaties that are binding on all persons or of resolutions by international institutions.”

46. An example of a decision of the Supreme Court in which a provision of domestic law was considered to be incompatible with a provision of the Convention, and for that reason held to be overridden by the latter, is that of 8 April 1988, cited in paragraph 40 above.

**THE LAW****ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION**

47. The applicant alleged that, through being prevented from recognising a child of whom he was the biological father, he was the victim of a violation of his right to respect for his “private and family life”. He relied on Article 8 of the Convention, the relevant parts of which provide:

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

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 ... for the protection of the rights and freedoms of others.”

**A. Whether there has been an “interference” with a right guaranteed by Article 8 of the Convention**

48. The applicant considered that there had been an “interference” with his right to respect for his private life and family life. He relied on the fact of his being the biological father of the child S.

49. The Government took the view that there had been no such interference. They endorsed the reasoning of the Court of Appeal that in fact there had been no “family life” between the applicant and S. at any relevant time. The applicant’s biological fatherhood was not sufficient *per se*. While it might be so that the applicant had lived together with S. and her mother from August 1987 until July 1988, that had not created “family life”

between them and him since he had not assumed the burden of caring for them.

50. Even assuming that there had at some point been “family life” between the applicant on the one hand and S. and her mother on the other, subsequent events had broken it. In particular, the applicant had lived in the Middle East for two and a half years after cohabitation had ceased, during which time he had not been in touch with S. at all and only sporadically with her mother. Their contacts after his return to the Netherlands had been sparse and irregular and devoid of mutual commitment.

51. The Court notes at the outset that the fact of the applicant’s biological fatherhood is not in dispute. In addition, the applicant cohabited with S. and her mother for a certain period after S. had been born; after the death of S.’s mother he continued to have contacts with S., which were considered important by the President of the Zwolle Regional Court and the Maastricht Regional Court in their decisions of 25 January and 3 October 1994 respectively. In these circumstances the Court accepts that there was “family life” between S. and the applicant (see, *mutatis mutandis*, *Keegan v. Ireland*, judgment of 26 May 1994, Series A no. 290, p. 18, § 45). There is no distinct question as regards the applicant’s “private life”; indeed the applicant’s arguments under both heads are inseparable.

52. Where the existence of a family tie with a child has been established, the State must act in a manner calculated to enable that tie to be developed and legal safeguards must be created that render possible, as from the moment of birth, the child’s integration into his or her family (see *Keegan*, cited above, p. 19, § 50, and *Kroon and Others v. the Netherlands*, judgment of 27 October 1994, Series A no. 297-C, p. 56, § 32).

53. The right vouchsafed to a father to recognise a child born out of wedlock as his, as provided in the law of the Netherlands (see paragraphs 37-43 above), although subject to conditions, is a reflection of this principle. The denial of the right to recognition where family life exists, such as occurred in the present case, constitutes an “interference” with the right to respect for family life. It will constitute a violation of Article 8 of the Convention unless the requirements of the second paragraph of that Article are met.

#### **B. Whether the interference was “in accordance with the law”**

54. The applicant argued that the interference had not been “in accordance with the law”. While Article 1:224 of the Civil Code, as in force at the time, made the validity of the recognition by a man of a child born out of wedlock conditional on the mother’s prior written permission as long as she was alive, after the mother’s death there was no longer any such condition. The mother could do nothing to prevent recognition after her death, not even by a provision in her will. The Supreme Court had in fact

recognised as much in its decision in the instant case. It followed logically that the refusal by the Netherlands courts to allow the applicant to recognise S. was *contra legem*.

55. The Government denied that the decisions of the Netherlands courts were contrary to domestic law. They pointed out that, pursuant to Article 94 of the Netherlands Constitution, if the application of domestic law led to a result contrary to the Convention then the latter prevailed. The legal basis of the “interference” in question was therefore the Convention itself, as part of domestic law.

56. The Court notes that at the time of the events complained of, the relevant provision of Netherlands law – Article 1:224 § 1 of the Civil Code – laid down that a man could only recognise a child born out of wedlock as his if the mother of the child had given her prior written permission. The Supreme Court, in its judgment in the instant case, ruled that the mother’s refusal of such permission – which was recognised by law in order to protect her interests – no longer had any effect after her death, even if it had been recorded in her will. However, because of the far-reaching consequences as a matter of domestic law of such recognition for the child, the courts should, after the death of a mother who had refused permission, balance the interests of the natural father in having his paternity recognised against the rights of the child as protected by Article 8 of the Convention.

57. As it is primarily for the national authorities, notably the courts, to interpret and apply national law, the Court finds that the interference complained of was in accordance with national law, as interpreted by the Supreme Court in the light of the Convention.

58. It follows that the interference complained of was “in accordance with the law” for the purposes of Article 8 § 2 of the Convention.

### **C. Whether the interference pursued a “legitimate aim”**

59. It is undisputed that the interference at issue pursued the “legitimate aim” of protecting “the rights and freedoms of others”.

### **D. Whether the interference was “necessary in a democratic society”**

60. The applicant argued that the Supreme Court had sanctioned an incorrect balancing of interests. In particular, it had been overlooked that a child had an interest in having a legal parent, especially if one of the parents was no longer alive; the corollary was that it was in fact the applicant’s duty, as S.’s biological father, to recognise her.

61. Noting that the Supreme Court had accepted that S.’s interest in being brought up in as favourable circumstances as possible was paramount, the applicant stated that recognition by him did not of itself imply any change in the situation in which S. was living. That might only result from

his appointment as S.'s guardian, which would require separate proceedings involving an examination of precisely that issue. It had therefore been inappropriate that the Supreme Court had considered – without any investigation having been undertaken into the matter – that the applicant had not proved himself able to take adequate care of S.

62. Finally, the Supreme Court ought not to have weighed S.'s interest in pursuing her “private life”, as perceived by it, against her interest in having at least one legal parent.

63. The Government pointed out that for both the Court of Appeal and the Supreme Court, the point of departure had been that, while establishing a family-law relationship between the applicant and S. through recognition might serve interests protected by Article 8 of the Convention, it might also harm S.'s interests as protected by that provision; a balance had therefore to be struck between the competing interests of the applicant and the child.

64. Netherlands law upheld the principle that a child and its biological father had the right to legally recognised family ties. This was reflected by the case-law of the Supreme Court itself.

65. The Netherlands courts had not failed to consider the natural ties between the father and his child. Nor had they failed to consider the child's interests in having a legal parent. However, they had found that S.'s interests were best served by allowing her to grow up in the family in which she had been placed after her mother's death, in accordance with the latter's express wishes, and where she received the care she needed. The applicant had never taken care of his daughter before, had never previously given any indication of wishing to do so, and had not established convincingly that he actually could do so in a responsible manner. Furthermore, allowing recognition would *ipso jure* mean that S. would take the applicant's surname, whereas she now bore the name of the family in which she was being raised; such a change would not be in her best interests either.

66. Lastly, if there was any clash of Article 8 rights between a child and its father, the interests of the child should always prevail.

67. The Court reiterates that where the existence of a family tie with a child has been established, legal safeguards must be created that render possible as from the moment of birth or as soon as possible thereafter the child's integration in his or her family (see *Keegan*, cited above, p. 19, § 50, and *Kroon and Others*, cited above, p. 56, § 32).

68. In the present case the result of the decisions of the domestic courts was that no legal family tie between the applicant and the child S. was recognised, notwithstanding the undisputed fact that he was her natural father.

69. The Court notes that, nonetheless, the impugned decision did not totally deprive the applicant of his family life with his daughter, since he continued to have access to her, pursuant to court decisions. In view of this fact it cannot be said that his rights under Article 8 were disregarded.

70. Furthermore, the circumstances of the present case differ from those of *Kroon and Others*, cited above, where the Court found a violation of Article 8 of the Convention: in that case, no other reason than a formal one was found for denying the father, who lived together with the child, the right to legal recognition of his paternity.

71. In contrast, in the present case the domestic courts accepted that the applicant had the intention of disrupting his daughter's family situation. He wanted recognition of his paternity so that he could have his daughter live with him instead of with her legal family.

72. The Court of Appeal, in its decision of 17 January 1995 (see paragraph 25 above), found that such a change would be detrimental to S.'s interests. In so doing it considered, among other things, that S.'s interests would be best served by allowing S. to be brought up as a member of the family in which she had lived since her mother's death. It also had regard to the harm that might result for S. from the automatic change after recognition of her surname to that of the applicant, which would set her apart from the other members of the family in which she was living.

73. The Court reiterates that in judicial decisions where the rights under Article 8 of parents and those of a child are at stake, the child's rights must be the paramount consideration. If any balancing of interests is necessary, the interests of the child must prevail (see *Elsholz v. Germany* [GC], no. 25735/94, § 52, ECHR 2000-VIII, and *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 72, ECHR 2001-V). This applies also in cases such as the present.

74. The Court has not found any indication that the domestic courts, in striking the balance they did between the rights of the applicant and those of the child, failed to take the applicant's rights sufficiently into account or decided in an arbitrary manner.

75. There has therefore not been a violation of Article 8 of the Convention.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

*Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 5 November 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ  
Registrar

J.-P. COSTA  
President