



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

FOURTH SECTION

CASE OF BACKLUND v. FINLAND

(Application no. 36498/05)

JUDGMENT
(merits)

STRASBOURG

6 July 2010

FINAL

06/10/2010

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

In the case of Backlund v. Finland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 15 June 2010,

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

PROCEDURE

1. The case originated in an application (no. 36498/05) against the Republic of Finland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Finnish national, Mr Sven Backlund (“the applicant”), on 11 October 2005.

2. The applicant was represented by Mr Kenneth Peth, a lawyer practising in Närpes. The Finnish Government (“the Government”) were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

3. The applicant alleged, in particular, that the time-limit for establishing the paternity of children born before the entry into force of the new Paternity Act on 1 October 1976 gave rise to a violation of his rights under Articles 8 and 14 as he could not have paternity established, despite conclusive DNA tests, while children born after 1 October 1976 did not face any such restrictions.

4. On 28 April 2008 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1937 and lives in Norrnäs.

6. The applicant was born out of wedlock. His mother, grandmother and everyone around him always considered N.S. as his father. N.S. never married or had other children.

7. On 1 October 1976 the Paternity Act came into force. The transitional provisions in the Implementing Act of the Paternity Act state that paternity proceedings with regard to a child born before the entry into force of the law had to be initiated within five years, that is, before 1 October 1981. Moreover, no claim could be examined after the death of the father. No such restrictions exist for children born after the entry into force of the Paternity Act.

8. N.S. was placed under guardianship in 2000.

9. In May 2002 the applicant requested the Korsholm District Court (*käräjäoikeus, tingsrätten*) to establish paternity. The court ordered DNA tests, which established with 99.4 % certainty that N.S. was the applicant's biological father.

10. On 7 April 2003 the District Court dismissed the applicant's claim. It found that as the applicant was born before the entry into force of the Paternity Act, he should have lodged his claim within the time-limit of five years, that is, before 1 October 1981. As he had lodged his claim only in May 2002, his claim was time-barred.

11. The applicant appealed to the Vasa Appeal Court (*hovioikeus, hovrätten*) claiming, *inter alia*, that the paternity of N.S. could not be established otherwise as, due to his state of health, he could no longer make a legally valid acknowledgement of paternity with respect to the applicant. This fact would place the applicant in a worse position *vis-à-vis* the children who were born after the entry into force of the Paternity Act. N.S.'s guardian supported the claim to have paternity established.

12. N.S. died in March 2004 while the case was pending before the Appeal Court. The inventory of his estate was made in June 2004. The estate, worth some 140,500 euros, was divided among N.S.'s siblings and their heirs.

13. On 8 July 2004 the Appeal Court dismissed the applicant's appeal.

14. The applicant appealed to the Supreme Court (*korkein oikeus, högsta domstolen*), reiterating his grounds of appeal already presented before the Appeal Court.

15. On 14 April 2005 the Supreme Court refused leave to appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitutional provisions

16. The Constitution of Finland (*perustuslaki, grundlagen*, Act no. 731/1999), Article 6, paragraphs 1 and 2, guarantees to everyone equality before the law and forbids discrimination of any kind:

“Everyone is equal before the law.

No one shall, without an acceptable reason, be treated differently from other persons on grounds of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person. ...”

17. Article 21, paragraph 1, of the Constitution guarantees to everyone the right to have one's case dealt with by a court of law:

“Everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority ...”

18. Article 106 of the Constitution gives a court of law the right to give primacy to the Constitution when the application of an Act would conflict with the Constitution:

“If, in a matter being tried by a court of law, the application of an Act would be in evident conflict with the Constitution, the court shall give primacy to the provision in the Constitution.”

B. Provisions and practice regulating paternity

19. According to section 20 of the Act on Children Born out of Wedlock (*laki avioliiton ulkopuolella syntyneistä lapsista, lagen om barn utom äktenskap*, Act no. 173/1922), a child born out of wedlock had a father, if a man acknowledged paternity, but paternity could not be established against a man's will. According to section 24 of the same Act, such defendant was deemed to be the person liable to provide child support to the child if he had had sexual intercourse with the child's mother at the time when the child was possibly conceived. However, such an action was to be dismissed if it was manifestly improbable that the child was conceived as a result of that sexual intercourse.

20. As the children born out of wedlock were put in a substantially worse position than the children born in wedlock, there was a need to guarantee equal treatment of all children before the law (see government proposal HE 90/1974). This became the main aim of the new Paternity Act of 1975 (*isyyslaki, lagen om faderskap*, Act no. 700/1975) which repealed the Act of 1922.

21. Section 3 of the Paternity Act provides that paternity is established either by acknowledgement or by a court decision. According to section 22, subsection 1, the child has a right to institute proceedings with a view to having paternity established.

22. Section 4 of the Implementing Act of the Paternity Act (*laki isyyslain toimeenpanosta, lagen angående införande av lagen om faderskap*, Act no. 701/1975) provides that the provisions of the Paternity Act shall also apply if the child was born before the entry into force of the Act, unless otherwise provided below. Section 5 provides that if a man, pursuant to the Act on Children Born out of Wedlock, enacted before the entry into force of the Paternity Act, has committed or been obliged by a final judgment to pay child support to a child born out of wedlock who has not the status of an acknowledged child, the provisions in sections 6 and 7 of this Act shall apply to the investigation of paternity, actions for the establishment of paternity and the exercise of the child's right to be heard.

23. Sections 6 and 7 of the Implementing Act of the Paternity Act provide as follows:

“The child welfare supervisor shall attend to the investigation of paternity as provided in the Paternity Act, if a child born before the entry into force of this Act has not reached fifteen years of age and the mother or the legal guardian of the child has expressed a wish that the child welfare supervisor attend to the investigation of paternity. After a man has acknowledged his paternity, the provisions in section 5, subsection 2; section 20, subsection 1; and section 21 of the Paternity Act shall apply to the obligation of the child welfare supervisor to attend to the investigation of paternity, and to the enforcement of acknowledgement.”

“A child or his or her legal guardian shall have the right of action for the establishment of paternity as provided in the Paternity Act. The child welfare supervisor shall not be entitled to exercise the child's right to be heard without a separate authorisation. Proceedings for the establishment of paternity must be initiated within five years from the entry into force of the Paternity Act. However, no proceedings may be instituted if the man is deceased.”

24. It appears from the drafting history of the Paternity Act (see Report of the Legal Affairs Committee LaVM 5/1975 vp, p. 10) that considerations of legal certainty underlay the decision to restrict the right of action. The entry into force of the Act opened up an opportunity to initiate proceedings that did not exist at the time when the children in question were conceived. The legislator considered that putative fathers' legal security required rapid elimination of uncertainty about possible claims being brought against them on the basis of the Paternity Act. The restriction that a man's death prevented the initiation of proceedings was justified by the argument that in such cases it was usually no longer possible to obtain sufficient evidence of the man's paternity.

25. The Supreme Court has held on several occasions that the five-year time-limit in question is to be strictly applied (see for example *KKO 2003:107*). An exception has been made in a case where the paternity

of the mother's husband had to be annulled first and, as a result of that, the child would have become fatherless if the time-limit had been strictly respected (see *KKO 1993:58*).

26. In its precedent case *KKO 1982-II-165* the Supreme Court considered that the five-year time-limit in section 7, subsection 2, of the Implementing Act of the Paternity Act was not such a time-limit that could be restored by seeking extraordinary remedies (*menetetyn määräjän palauttaminen, återställandet av försutten fatalietid*).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

27. The applicant complained that the time-limit for establishing the paternity of children born before the entry into force of the new Paternity Act on 1 October 1976 gave rise to a violation of his rights under Article 8 as he could not have the paternity established, despite the conclusive DNA tests. Article 8 of the Convention reads as follows:

“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.”

28. The Government contested that argument.

A. Admissibility

29. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

A. The parties' submissions

30. The applicant maintained that his only possibility to have the paternity of N.S. established had been by a court decision as his father had

lacked legal capacity and, according to Finnish law, his guardian had no capacity to do it for him. It had been confirmed by DNA tests ordered by the District Court that N.S. had been his biological father. The applicant had not been aware of the five-year time-limit nor had the Government provided information about it. Moreover, as the time-limit had been tied to the entry into force of the Paternity Act, it had been running regardless of a child's circumstances without any possibility for extensions or exceptions.

31. The applicant pointed out that he did not have real opportunity to initiate paternity proceedings between 1976 and 1981 as his mother had already passed away in 1967 and blood tests were thus no longer possible. DNA testing, in which only the father and the child needed to be tested, had become available only in the 1980s. N.S. had no other children, and thus there were no siblings whose economic or other interests would have been at risk.

32. The Government accepted that the impossibility for the applicant to have his father's paternity established after the expiry of the five-year time-limit had constituted an interference with his private life under Article 8 of the Convention. The impugned measures had had a basis in Finnish legislation, namely in section 7, subsection 2, of the Implementing Act of the Paternity Act.

33. As to whether the interference had been “necessary in a democratic society”, the Government pointed out that the applicant had been 39 years old when the Paternity Act entered into force in 1976. The Act was retroactive in order to guarantee equality in law between children, irrespective of their descent. The time-limit of five years only concerned cases where the paternity was to be established by a court decision while it was still possible today for a father to acknowledge such a child. The aim of the time-limit had been to ensure a rapid examination of possible claims made against putative fathers in order to protect their rights and freedoms, and to ensure legal certainty and finality in family relations. The restriction concerning a man's death was justified, as in such cases it was usually no longer possible to obtain sufficient evidence of paternity.

34. The Government pointed out that the applicant had not given any reasons for not having instituted paternity proceedings during the statutory time-limit but only twenty years later. The applicant had known, or at least had had grounds for assuming, who his father was and that paternity had not been established. Even though the applicant's father had not been capable of acknowledging him, paternity proceedings against him could have been initiated within the statutory time-limit. Moreover, the sufficiency or insufficiency of blood testing as evidence could only have been established by initiating paternity proceedings. The reform of family legislation including the paternity laws had been one of the main legal reforms in the 1970s and it had been widely publicised. The applicant, being already an adult at the time, must have been aware of the law reform and the new

possibility to have his alleged father's paternity established by a court decision. The five-year time limit was thus proportionate to the legitimate aim pursued, namely the general interest in protecting legal certainty of family relationships.

B. The Court's assessment

1. Applicability of Article 8 of the Convention

35. The Court notes that it is not disputed between the parties that Article 8 is applicable.

36. In this connection the Court notes that the applicant, a child born out of wedlock, sought by means of judicial proceedings to determine his legal relationship with the person he claimed was his father, through the confirmation of the biological truth.

37. The Court has held on numerous occasions that paternity proceedings fall within the scope of Article 8 (see *Mikulić v. Croatia*, no. 53176/99, § 51, ECHR 2002-I; and *Jäggi v. Switzerland*, no. 58757/00, § 25, ECHR 2006-). In the instant case the Court is not called upon to determine whether the proceedings to establish parental ties between the applicant and his biological father concern “family life” within the meaning of Article 8, since in any event the right to know one's ascendants falls within the scope of the concept of “private life”, which encompasses important aspects of one's personal identity, such as the identity of one's parents (see *Odièvre v. France* [GC], no. 42326/98, § 29, ECHR 2003-III, and *Mikulić v. Croatia*, cited above, § 53). There appears, furthermore, to be no reason of principle why the notion of “private life” should be taken to exclude the determination of a legal or biological relationship between a child born out of wedlock and his natural father (see, *mutatis mutandis*, *Mikulić*, *ibid.*; and *Jäggi v. Switzerland*, cited above, § 25).

38. Accordingly, the facts of the case fall within the ambit of Article 8 of the Convention.

2. Whether the case involves a positive obligation or an interference

39. The Court reiterates that the essential object of Article 8 is to protect the individual against arbitrary action by public authorities. There may in addition be positive obligations inherent in ensuring effective “respect” for private or family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves (see *Kroon and Others v. the Netherlands*, 27 October 1994, § 31, Series A no. 297-C; and *Mikulić v. Croatia*, cited above, § 57). However, the boundaries between the State's positive and negative obligations under this provision do not lend themselves to precise definition. The applicable principles are nonetheless

similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation (see *Keegan v. Ireland*, 26 May 1994, § 49, Series A no. 290; and *Kroon and Others v. the Netherlands*, cited above).

40. The Court reiterates that its task is not to substitute itself for the competent domestic authorities in regulating paternity disputes at the national level, but rather to review under the Convention the decisions that those authorities have taken in the exercise of their power of appreciation (see, *inter alia*, *Róžański v. Poland*, no. 55339/00, § 62, 18 May 2006; *Mikulić v. Croatia*, cited above, § 59; and *Hokkanen v. Finland*, 23 September 1994, § 55, Series A no. 299-A). The Court will therefore examine whether the respondent State, in handling the applicant's action for judicial recognition of paternity, has complied with its positive obligations under Article 8 of the Convention.

3. Whether the impossibility to bring action was “in accordance with the law” and pursued a legitimate aim

41. At the outset, the Court observes that the applicant did not dispute that the impossibility of bringing an action for judicial recognition of paternity was “in accordance with the law”. Indeed, he complained that the time-limit imposed by the Paternity Act prevented him from having the possibility of obtaining judicial recognition of paternity before the domestic courts, in violation of Article 8 of the Convention.

42. In this connection it can be observed that the Paternity Act introduced the right of a child or his or her legal guardian to institute proceedings for judicial recognition of paternity in the domestic legal system in 1976. According to the Implementing Act of the Paternity Act and concerning children born before the entry into force of the Paternity Act, this right was subject to a five-year time-limit which started to run from the entry into force of the Act in 1976. Thus, in the instant case the applicant had until 1 October 1981 to institute paternity proceedings. The applicant, however, instituted such proceedings only in May 2002 as he claimed that he had not been aware of the five-year time-limit. His application was then found to be time-barred.

43. Moreover, the impossibility of bringing an action for judicial recognition of paternity pursued a legitimate aim. The time-limit imposed by the Implementing Act of the Paternity Act for actions concerning recognition of paternity was intended to protect the interests of putative fathers from stale claims and prevent possible injustice if courts were required to make findings of fact that went back many years (see, *inter alia*, *Mizzi*, no. 26111/02, § 83, ECHR 2006-I (extracts); *Shofman v. Russia*, no. 74826/01, § 39, 24 November 2005; and, *mutatis mutandis*, *Stubbings*

and Others v. the United Kingdom, 22 October 1996, § 51, *Reports of Judgments and Decisions* 1996-IV).

44. What the Court needs to ascertain next is whether the nature of the time-limit in question, and/or the manner in which it was applied, was compatible with the Convention.

4. *Whether a fair balance was struck*

45. The Court recalls that it has previously accepted that the introduction of a time-limit for the institution of paternity proceedings was justified by the desire to ensure legal certainty and finality in family relations (see, for example, *Mizzi v. Malta*, cited above, § 88; and *Rasmussen v. Denmark*, 28 November 1984, § 41, Series A no. 87). Accordingly, the existence of a limitation period *per se* is not incompatible with the Convention. What the Court needs to ascertain in a given case is whether the nature of the time-limit in question and/or the manner in which it is applied is compatible with the Convention.

46. When deciding whether or not there has been compliance with Article 8 of the Convention, the Court must determine whether, on the facts of the case, a fair balance was struck by the State between the competing rights and interests at stake. Apart from weighing the interests of the individual *vis-à-vis* the general interest of the community as a whole, a balancing exercise is also required with regard to competing private interests. In this connection, it should be observed that the expression “everyone” in Article 8 of the Convention applies to both the child and the putative father. On the one hand, people have a right to know their origins, that right being derived from a wide interpretation of the scope of the notion of private life (see *Odièvre v. France* [GC], cited above, § 42). 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 eliminate any uncertainty in this respect (see *Mikulić v. Croatia*, cited above, §§ 64 and 65). On the other hand, a putative father's interest in being protected from claims concerning facts that go back many years cannot be denied. Finally, in addition to that conflict of interest, other interests may come into play, such as those of third parties, essentially the putative father's family, and the general interest of legal certainty.

47. While performing the “balancing of interests test” in the examination of cases concerning limitations on the institution of paternity claims, the Court has taken a number of factors into consideration. For instance, the particular point in time when an applicant becomes aware of the biological reality is pertinent. The Court will therefore examine whether the circumstances substantiating a particular paternity claim are met before or after the expiry of the applicable time-limit (see, for instance, the cases of *Shofman v. Russia*, cited above, §§ 40 and 43; and *Mizzi v. Malta*, cited above, §§ 109-11, concerning disavowal of paternity claims). Furthermore,

the Court will examine whether or not an alternative means of redress exists in the event the proceedings in question are time-barred. This would include, for example, the availability of effective domestic remedies to obtain the re-opening of the time-limit (see, for example, *Mizzi v. Malta*, cited above, § 111) or exceptions to the application of a time-limit in situations where a person becomes aware of the biological reality after the time-limit has expired (see *Shofman v. Russia*, cited above, § 43).

48. The yardstick against which the above factors are measured is whether a legal presumption has been allowed to prevail over biological and social reality and if so whether, in the circumstances, this is compatible, having regard to the margin of appreciation left to the State, with the obligation to secure effective “respect” for private and family life, taking into account the established facts and the wishes of those concerned (see *Kroon and Others v. the Netherlands*, cited above, § 40). For example, the Court has found that rigid limitation periods or other obstacles to actions contesting paternity that apply irrespective of a putative father's awareness of the circumstances casting doubt on his paternity, without allowing for any exceptions, violated Article 8 of the Convention (see, *Shofman v. Russia*, cited above, §§ 43-45; see also, *mutatis mutandis*, *Mizzi v. Malta*, cited above, §§ 80 and 111-13; *Paulík v. Slovakia*, no. 10699/05, §§ 45-47, ECHR 2006-... (extracts); and *Tavlı v. Turkey*, no. 11449/02, §§ 34-38, 9 November 2006).

49. In connection with the above, the Court further reiterates that the choice of the means calculated to secure compliance with Article 8 in the sphere of the relations of individuals between themselves is in principle a matter that falls within the Contracting States' margin of appreciation. In this connection, there are different ways of ensuring “respect for private life”, and the nature of the State's obligation will depend on the particular aspect of private life that is at issue (see *Odièvre v. France* [GC], cited above, § 46; and *X and Y v. the Netherlands*, 26 March 1985, § 24, Series A no. 91).

50. In connection with the examination of the case *Phinikaridou v. Cyprus* (no. 23890/02, ECHR 2007-XIV (extracts)), the Court made a comparative study of the Contracting States' legislation on the institution of actions for judicial recognition of paternity. This study revealed that there was no uniform approach in this field. Unlike proceedings by fathers for the establishment or denial of paternity (see *Shofman v. Russia*, cited above, § 37), a significant number of States did not set a limitation period for children to bring an action aimed at having paternity established. Indeed, a tendency could be observed towards a greater protection of the right of the child to have its paternal affiliation established.

51. In the States in which a limitation period for bringing such proceedings existed, the length of the applicable period varied significantly, the time-limit varying between one and thirty years. Furthermore, although

there was a difference in the *dies a quo* of the limitation period, in the majority of these States the relevant period was calculated from the child's majority, birth, or the existence of a final judgment denying paternity irrespective of the child's awareness of the facts surrounding its paternal affiliation and without providing any exceptions. Only a small number of legal systems seemed to have produced solutions to the problem which arises when the relevant circumstances become known only after the expiry of the time-limit, for instance, by providing for the possibility of bringing an action after the time-limit has expired if there was a material or moral impossibility of lodging it within that period or if there were good reasons for the delay.

52. Turning to the present case, the Court notes that the provisions of the Paternity Act adequately secure the interests of a child whose father acknowledges him or her, or who is born after the entry into force of the Paternity Act, or who is born before and is able to prove the paternity of the alleged father within the period provided for by the Act. They do not, however, make any allowance for children in the applicant's situation: even though the applicant could have the alleged paternity biologically confirmed in a scientifically reliable manner, he could not have it legally confirmed by the courts as the five-year period had elapsed.

53. The Court can accept that, as the applicant was an adult during the five-year period, he should have brought the paternity proceedings during that time-limit. Taken into consideration that the new paternity legislation was one of the most fundamental law reforms in the 1970s and that it was widely publicised, the Court puts no emphasis on the applicant's alleged ignorance of the statutory time-limit. However, the Court has difficulties in accepting the inflexible limitation period with time running irrespective of a child's ability to provide reliable evidence, and without providing any exceptions to the application of that period (see, *mutatis mutandis*, *Shofman v. Russia*, cited above, § 43). In the present case, even though the applicant was able to present a DNA test indicating with conclusive certainty that N.S. was his biological father, he was deprived of the possibility of having this fact legally confirmed (see, *mutatis mutandis*, *Phinikaridou v. Cyprus*, cited above, § 62; and *Turnalı v. Turkey*, no. 4914/03, § 44, 7 April 2009). The Court finds it difficult to accept that the national authorities allowed the legal reality to contradict the biological reality by relying on the absolute nature of the time-limit even though the applicant had put forward new conclusive evidence (see *Paulík v. Slovakia*, cited above, § 46).

54. Moreover, the Court notes that national legislation did not provide any alternative means of redress as the time-limit could not as such be restored by seeking extraordinary remedies. Nor had the Supreme Court agreed to any exceptions to the application of the time-limit in question except in one exceptional case.

55. It is clear that in the Supreme Court's practice (see for example case *KKO 2003:107*) the general interest as well as the competing rights and interests both of a putative father and his family have been accorded greater weight than a child's right to have its origins legally confirmed. In the present case, however, the national courts did not make any attempt to balance the competing interests but only concluded that the applicant's claim was time-barred. Thus, the national courts did not consider at all whether or not the general interest in protecting legal certainty of family relationships or the interest of the father and his family outweighed the applicant's right to have an opportunity to seek a judicial determination of paternity. The Court considers that such a straightforward restriction of the applicant's right to institute proceedings for the judicial determination of paternity is not proportionate to the legitimate aim pursued. In this connection the Court reiterates that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective (see *Airey v. Ireland*, 9 October 1979, § 24, Series A no. 32).

56. Hence, even having regard to the margin of appreciation left to the State, the Court considers that the application of a rigid time-limit for the exercise of paternity proceedings, regardless of the circumstances of an individual case and in particular, the obligation to take action within that time-limit, impairs the very essence of the right to respect for one's private life under Article 8 of the Convention.

57. In view of the above, and in particular having regard to the absolute nature of the limitation period and the Supreme Court's refusal to allow any exceptions thereto, the Court finds that a fair balance has not been struck between the different interests involved and, therefore, that there has been a failure to secure the applicant's right to respect for his private life.

58. Accordingly, the Court finds that there has been a violation of Article 8.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 8

59. The applicant also complained that the five-year time-limit set in national legislation amounted to discrimination against him in comparison with children born after the entry into force of the Paternity Act. He referred to Article 14 of the Convention which reads as follows:

“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.”

60. The Government contested that argument.

A. Admissibility

61. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

62. The Court observes that at the heart of this part of the application is the impossibility for the applicant to have his biological father's paternity legally confirmed. The Court has examined this issue above under Article 8 of the Convention and has found a violation of this Article. In view of those findings it finds it unnecessary to examine the facts of the case separately under Article 14 taken in conjunction with Article 8 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicant claimed 140,500.20 euros (EUR) plus interest in respect of pecuniary damage (lost share of his father's estate) and EUR 7,000 plus interest in respect of non-pecuniary damage.

65. The Government considered that there was no causal link between the alleged violation of Articles 8 and/or 14 of the Convention and any pecuniary damage suffered. In any event, this kind of assessment of the pecuniary damage was speculative and could not be accepted as such. Were the Court to find a violation, the Government suggested that the question of pecuniary damage be reserved. As to the non-pecuniary damage, the Government considered the applicant's claim too high as to *quantum* and that, in any event, the compensation for non-pecuniary damage should not exceed EUR 1,000 in total.

66. As to the pecuniary damage, the Court considers that the question of the application of Article 41 is not ready for decision. Accordingly, it shall be reserved and the subsequent procedure fixed having regard to any agreement which might be reached between the parties (Rule 75 § 1 of the

Rules of Court). As to the non-pecuniary damage, the Court awards the applicant EUR 6,000.

B. Costs and expenses

67. The applicant also claimed EUR 739.35 for the costs and expenses incurred before the domestic courts and EUR 8,669.57 for those incurred before the Court.

68. The Government had no comments concerning the costs and expenses incurred before the domestic courts. As to the costs and expenses incurred before the Court, the Government considered that costs for copying and faxing were included in counsel's invoice and that the hourly rate was somewhat high. In any event, the total amount of compensation for costs and expenses should not exceed EUR 5,500 (inclusive of value-added tax).

69. 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 have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 6,000 covering costs under all heads.

C. Default interest

70. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

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* that it is not necessary to examine separately the complaint under Article 14 of the Convention taken in conjunction with Article 8;
4. *Holds* that the question of the application of Article 41 is not ready for decision in so far as the applicant has claimed pecuniary damage and accordingly,
 - (a) *reserves* the said question;
 - (b) *invites* the Government and the applicant to submit, within six months from the date on which the judgment becomes final in

accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;

(c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

5. *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:

(i) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 6,000 (six thousand euros), plus any tax that may be chargeable to him, 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;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President