



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

FOURTH SECTION

CASE OF GRÖNMARK v. FINLAND

(Application no. 17038/04)

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 Grönmark 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. 17038/04) 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, Ms Maarit Grönmark (“the applicant”), on 13 May 2004.

2. The applicant was represented by Ms Tuula Weckman, a lawyer practising in Mäntsälä. 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, under Articles 8 and 14 that she had been unable to have her biological father's paternity legally established due to the five-year time-limit set in national legislation for children born before the entry into force of the Paternity Act in 1976.

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 1968 and lives in Mäntsälä.

6. The applicant was born out of wedlock. In 1969 her father R.J. was ordered, on the initiative of the social services and by a decision of a District Court (*käräjäoikeus, tingsrätten*), to pay child support until the applicant's 17th birthday.

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 Act 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. In 1985 the applicant's mother and R.J. agreed on one additional year of child support. The agreement was certified by the social services. The applicant attained majority in 1986.

9. R.J. died in November 1999 and the applicant found out that he had never been legally registered as her father. All of the parties had always been under the impression that paternity had been established when the duty to pay child support was ordered by the District Court.

10. In October 2000 the applicant brought a civil claim against R.J.'s legal heir and requested the Orimattila District Court to confirm the paternity. She stated that neither she nor her mother had known that they needed to bring a claim against R.J. to establish paternity, nor did they know that there was a time-limit. They further stated that the social services had been obliged by law to inform them of these issues. No such information had been given to them although the mother of the applicant's half-sister had been informed at the relevant time.

11. The District Court ordered DNA tests to be performed on the applicant, her mother and R.J.'s two brothers. The test was conclusive as to the paternity, with 99.8 % certainty.

12. On 12 April 2001 the District Court dismissed the applicant's claim. The court stated that the transitional provision with regard to the death of the father was no longer relevant in the case as modern technology enabled testing that had not been possible in the 1970s when the Act had been enacted. R.J.'s death was thus no longer an obstacle for bringing a paternity claim against him. However, the claim had been brought after the expiry of the five-year time-limit. The reason why the claim had been brought late was that the applicant and her mother had been mistaken about the legal character of the child support decision but this mistake was not of a kind that would have justified a derogation from the five-year time-limit. The time-limit itself was not unreasonable or discriminatory nor was it incompatible with the Constitution, the Convention or the United Nations' Convention on the Rights of the Child. The court thus concluded that the applicant's claim was time-barred.

13. On 6 February 2002 the Kouvola Appeal Court (*hovioikeus, hovrätten*) upheld the District Court's decision on the same grounds as the latter.

14. The referendary of the Appeal Court considered in her report (*mietintö, betänkande*) that, since it had been established with DNA tests that R.J. was actually the biological father and since the applicant had a half-sister born in 1976 who had been acknowledged by R.J. in 1981, it would not be against the spirit of the Act to allow the establishment of paternity with regard to the applicant. Furthermore, she considered that applying the five-year rule in the specific circumstances would put the daughters in unequal positions with regard to inheritance and family relations. She referred to Article 8 of the Convention as well as to Article 7 of the United Nations' Convention on the Rights of the Child.

15. The applicant appealed to the Supreme Court (*korkein oikeus, högsta domstolen*). On 11 July 2002 the Supreme Court granted leave to appeal.

16. On 17 November 2003 the Supreme Court dismissed the applicant's claim in its precedent judgment *KKO 2003:107* on the following grounds:

“The Paternity Act, on which [the applicant's] claim is based, entered into force on 1 October 1976. According to section 4 of its Implementing Act, the provisions of the Paternity Act are also applied when the child is born before the entry into force of the Act, unless otherwise provided in the Implementing Act. When the child was born before the entry into force of the Paternity Act, proceedings for the establishment of paternity must be initiated, in accordance with section 7, subsection 2, of the Implementing Act, within the time-limit of five years from the entry into force of the Paternity Act. According to the same provision, proceedings can no longer be initiated if the man is deceased.

[The applicant] requested in her action directed against the heir [S.T.] of [R.J.], who had died in 1999, that it be confirmed that [R.J.] was her father. [The applicant] was born out of wedlock on 2 September 1968 and thus before the entry into force of the Paternity Act. According to section 7, subsection 2, of the Implementing Act, proceedings for the establishment of the paternity of [R.J.] should have been brought within the five-year time-limit from the entry into force of the Paternity Act, that is, at the latest on 1 October 1981. [The applicant] initiated the proceedings only on 29 September 2000. Therefore the lower courts rejected her action as time-barred.

The above-mentioned five-year time-limit applies only to those children who were born before the entry into force of the Paternity Act. Those children who were born after the entry into force of the Paternity Act can initiate proceedings for the establishment of paternity without any time-limits or any restriction related to the death of the man.

The question is first of all whether the time-limit in question, which prohibits [the applicant] having paternity established, puts her, contrary to Article 6, paragraph 2, of the Constitution, in a different position without acceptable justification, due to her date of birth and thus her age, to those children who were born out of wedlock after the entry into force of the Paternity Act. Only in the case that the answer to this question is in the affirmative, can the question of whether [R.J.'s] death prevents the establishment of his paternity arise.

It can be stated that the purpose of the time-limit in section 7, subsection 2, of the Implementing Act is that the child or its guardian decides to initiate the paternity proceedings within a reasonable time after the entry into force of the Act. Taking into account the interests of different parties, the legislator has considered five years as a reasonable and sufficient time-limit. This time-limit can be motivated by legal certainty considerations.

Before the entry into force of the Paternity Act, paternity of a child born out of wedlock could normally be established only if the man acknowledged his paternity. The paternity could be established by a court decision against the man's will only on very limited occasions and mainly when the child was considered as an engagement child in accordance with section 6, subsection 1, of the Implementing Act of the Marriage Act and Chapter 2, section 4, subsection 1, of the Code of Inheritance, as in force at the relevant time. On other occasions the man, who by having intercourse with the mother could have made her pregnant, could only be held liable to pay to the child alimony in accordance with the Act on Children Born out of Wedlock (173/1922). A child who had not been acknowledged or who was not an engagement child had no right to inherit from its father or the father's relatives.

The aim of the Paternity Act and of the concurrent legislative reform of the rights of a child was to guarantee the legal equality of children regardless of their descent. Therefore the provisions of the Paternity Act were made applicable also to children born before the entry into force of the Act. According to section 4 of the Implementing Act, children born out of wedlock had the same legal standing regardless of whether they were born before or after the entry into force of the Paternity Act. The fact that an alimony issue had been decided by a court before the entry into force of the Act did not prevent bringing proceedings for the establishment of paternity. Children also received the same right, irrespective of their descent, to inherit from their fathers and the fathers' relatives.

The Paternity Act thus meant that the legal status of children born out of wedlock was fundamentally changed and that they received an equal status with children born within wedlock. The entry into force of the Act did not, however, automatically *ex lege* change the children's legal status. If a man did not acknowledge a child, paternity proceedings had to be initiated in respect of a child born out of wedlock and the action could only be granted if there was sufficient evidence of the biological paternity. In this respect the provisions are the same as concerning children born after the entry into force of the Act.

The fact that the Paternity Act was made applicable also to children born before the entry into force of the Act created uncertainties as to whether new claims, which had not even been possible under the previous legislation and for which there had thus been no need to be prepared, were going to be presented on the basis of events that had maybe taken place long before the entry into force of the Act. It was important for a man to know, *inter alia*, who his heirs were in order to dispose by will of their shares. This also had consequences for the man's relatives as the establishment of paternity had an effect on their rights because of the child's right to inherit.

The number of persons who could be concerned by the change of legal status provided for in the Paternity Act was considerable. Proceedings for the establishment of paternity could be initiated within the above-mentioned five-year time-limit irrespective of the age of the person born out of wedlock. The establishment of paternity could change legal relationships created maybe decades earlier. The change

of the man's legal status due to the establishment of paternity can lead to an annulment of previous decisions also in cases when the children are born after the entry into force of the Paternity Act. The retroactive application of the provisions concerning establishment of paternity in respect of children born before the entry into force of the Act and the effects that it has on legal relationships created under the earlier provisions may create even bigger and more significant problems. The probability of such problems is greater the more time has elapsed since the entry into force of the Act. There are thus strong reasons for having the time-limit in section 7, subsection 2, of the Implementing Act.

The provision containing the time-limit has not been conducive to creating confusing interpretations but, on the contrary, it is unambiguous and strict. In its precedent judgment KKO 1993:58 the court has examined an action for the establishment of paternity although it had been brought later than within the five-year time-limit from the entry into force of the Paternity Act and the man was deceased. However, the case concerned a child who had had the status of a child born within wedlock when the Act entered into force and who could only initiate proceedings for the establishment of the paternity of another man after the paternity of the mother's husband had been annulled. [In the applicant's] case there were no legal obstacles for initiating the proceedings.

The Paternity Act has now been in force for more than 25 years. All children born before its entry into force have been adults for some time. It is probable that the paternity of almost all children born then out of wedlock has already been established in one way or another with a final court decision or otherwise in accordance with the time-limit provided in section 7, subsection 2 of the Implementing Act. The legal status of these children has also been determined accordingly. The legal situation can be regarded as established. For these reasons, and especially having regard to the time elapsed since the entry into force of the Paternity Act, this time-limit has today an even more significant role in providing legal certainty.

It has not been claimed that [the applicant] and the putative father [R.J.] had ever lived together nor has there ever been any family relationship between them or any other close relationship. [The applicant] was already 32 years old when she initiated the proceedings. Taking into account [R.J.'s] death and the circumstances as a whole, the establishment of his paternity would have significance only in relation to the applicant's right to inherit. The international conventions by which Finland is bound, such as the Convention on the Rights of the Child (SopS 60/1991) and the European Convention on Human Rights (SopS 19/1990), and their case law, do not support such interpretation that the literal application of section 7, subsection 2, of the Implementing Act would be incompatible with these Conventions in the present case.

On the above-mentioned grounds the Supreme Court considers that section 7, subsection 2, of the Implementing Act does not put [the applicant], who was born before the entry into force of the Paternity Act, in a different position without acceptable justification, due to her date of birth and thus her age, to those children who were born out of wedlock after the entry into force of the Act. The application of the five-year time-limit in that provision is thus not incompatible with the prohibition of discrimination provided in Article 6, paragraph 2, of the Constitution.

17. The referendary of the Supreme Court stated in her report that refusing to establish the applicant's paternity would be unconstitutional and would involve discrimination. The referendary proposed that the Supreme

Court disregard the time-limit on the basis of Article 106 of the Constitution.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitutional and other provisions

18. 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. ...”

19. 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 ...”

20. 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.”

21. According to Chapter 12, section 1, subsection 2, of the Code of Judicial Procedure (*oikeudenkäymiskaari, rättegångsbalken*; Act no. 444/1999):

“A minor who has attained fifteen years of age shall have an independent right of action and right to be heard in a matter concerning his or her person, parallel to that of the person responsible for his or her care and custody or his or her other legal representative.”

B. Provisions and practice regulating paternity

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.”

27. 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.

28. The Supreme Court has held on several occasions that the five-year time-limit in question is to be strictly applied. 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*).

29. 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 (*menetetyt määräjän palauttaminen, återställandet av försutten fatalietid*).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

30. The applicant complained that she had been unable to have R.J.'s paternity established due to the five-year time-limit set in national legislation for children born before entry into force of the Paternity Act in 1976. 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.”

31. The Government contested that argument.

A. Admissibility

32. 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

33. The applicant maintained that even though the rights of the putative father and his relatives did need some protection, the relatives were not always against the establishment of paternity, even after the death of the putative father. In the applicant's case the brothers of her biological father wanted the paternity to be confirmed and had given their DNA for testing in order to confirm that paternity. Nobody's rights had been violated. On the contrary, the situation which all parties had already considered as legal would have been legally confirmed. In the applicant's case the DNA evidence clearly showed (99.8%) that R.J. was her biological father.

34. The applicant pointed out that R.J. had always recognised her as his daughter and had paid child support to her. Due to these circumstances all parties had always believed that R.J. was also legally the applicant's father. As the applicant had been eight years' old when the Paternity Act came into force and thirteen when the time-limit had expired, she could not have taken any action on her own. The social services had not informed the applicant or her mother of the changing legislation in the 1970s and it could not be expected that they would have known about it on their own. They had had no need to verify the information in the population register. The applicant concluded that the impossibility to have her biological father's paternity legally established after the five-year time-limit violated Article 8.

35. The Government accepted that there had been an interference with the applicant's private life but maintained that this interference had been in accordance with the law and that it had been necessary in a democratic society for the protection of the rights and freedoms of others. The purpose of the Paternity Act was to guarantee equality in law between children, irrespective of descent, and for this reason it was retroactive. The limitation of retroactivity to five years only concerned those cases where paternity was to be established by a court decision. According to the preparatory works of the Paternity Act, the requirement of legal certainty required rapid elimination of uncertainty about possible claims to be made against putative fathers. The restriction concerning the death of the man was justified on the grounds that it was no longer possible to obtain sufficient evidence of the man's paternity if he were deceased. The child welfare supervisor could only initiate paternity proceedings in respect of a child who had been born before the entry into force of the Paternity Act if the child was under fifteen years of age and the mother or the legal guardian had expressed the wish for such proceedings to be initiated.

36. The Government pointed out that, in the present case, the applicant had not given any valid reason for not having instituted paternity proceedings within the five-year time-limit. Even though she had received

child support from her putative father, it did not mean that the latter's paternity had been established. 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's mother must have been aware of the law reform as well as the identity of the putative father. She could have either instituted the proceedings herself or asked the child welfare supervisor to do so.

B. The Court's assessment

1. Applicability of Article 8 of the Convention

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

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

39. 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 her 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).

40. 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

41. 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).

42. 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*

43. 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, she complained that the time-limit imposed by the Paternity Act prevented her from having the possibility of obtaining judicial recognition of paternity before the domestic courts in violation of Article 8 of the Convention.

44. 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 or her legal guardian had until 1 October 1981 to institute paternity proceedings. The applicant, however, instituted such proceedings only in September 2000 as she claimed that she had not known that paternity had not been legally established until November 1999 when R.J. had died. Her application was then found to be time-barred.

45. 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).

46. 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*

47. 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.

48. 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.

49. 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 accordingly 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 looks into 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).

50. 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 *Tavli v. Turkey*, no. 11449/02, §§ 34-38, 9 November 2006).

51. 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).

52. 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 aiming to have paternity established. Indeed, a tendency could be ascertained towards a greater protection of the right of the child to have its paternal affiliation established.

53. In the States in which a limitation period for bringing such proceedings existed, the length of the applicable periods varied significantly, the time-limit varying between one and thirty years. Furthermore, although there was a difference in the *dies a quo* of the limitations periods, 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.

54. 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 initiate the paternity proceedings within the period provided for by the Act. They do not, however, make any allowance for children in the applicant's situation: her father had not acknowledged her. When the statutory five-year-period started she was eight years old and when it finished she was thirteen years old. The child welfare supervisor was not entitled to exercise the child's right of action without a separate authorisation from the mother. When she reached the age that she could have taken action without her mother's consent, the limitation period had already elapsed.

55. The Court has difficulties in accepting the inflexible limitation period with time running irrespective of a child's age and legal capacity, and without providing any exceptions to the application of that period (see, *mutatis mutandis*, *Shofman v. Russia*, cited above, § 43). The main problem therefore is the absolute nature of the time-limit rather than its *dies a quo* as such. In view of the fact that in the present case the biological father had already died, judicial proceedings before the national courts were the only avenue by which the applicant could have legally established the legal status of her biological father. As a result of this rigid time-limit, as upheld by the Supreme Court, the applicant was deprived of the possibility of obtaining a judicial determination that R.J. was her father. She was deprived of this right even though she was in a situation where she had not had any realistic opportunity to go to court during the limitation period due to her age (see, *mutatis mutandis*, *Phinikaridou v. Cyprus*, cited above, § 62; and *Turnalı v. Turkey*, no. 4914/03, § 44, 7 April 2009).

56. Furthermore, even though the identity of the applicant's biological father was known to all parties, the applicant was able to provide only later, through DNA tests, conclusive evidence about her biological father's

paternity. 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 (see *Paulík v. Slovakia*, cited above, § 46).

57. 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 accepted any exceptions to be made to the application of the time-limit in question except in one exceptional case.

58. It is clear from the Supreme Court's judgment that the general interest as well as the competing rights and interests both of the putative father and his family were accorded greater weight than the applicant's right to have her origins legally confirmed. The Court, however, does not consider that such a radical restriction of the applicant's right to institute proceedings for the judicial determination of paternity was proportionate to the legitimate aim pursued. In particular, it has not been shown how 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 judicial determination of paternity. This is even more so in the present case as the identity of the applicant's biological father had been known since her birth, he had paid child support to her and the biological father's relatives did not oppose the confirmation of paternity. 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).

59. 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.

60. 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 her private life.

61. 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

62. The applicant also complained that the five-year time-limit set in national legislation amounted to discrimination against her in comparison to

children born after the entry into force of the Paternity Act. She 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.”

63. The Government contested that argument.

A. Admissibility

64. 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

65. The Court observes that at the heart of this part of the application is the impossibility for the applicant to have her 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

66. 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

67. The applicant claimed 5,430 euros (EUR) plus interest in respect of pecuniary damage (lost share of her father's estate) and EUR 15,000 in respect of non-pecuniary damage.

68. 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.

69. 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

70. The applicant also claimed EUR 10,461.50 for the costs and expenses incurred before the Court.

71. The Government considered that the number of hours used for the applicant's observations was too high and that the total amount of compensation for costs and expenses should not exceed EUR 5,000.

72. 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 5,000 (inclusive of value-added tax) for the proceedings before the Court.

C. Default interest

73. 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 5,000 (five thousand euros), plus any tax that may be chargeable to her, 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