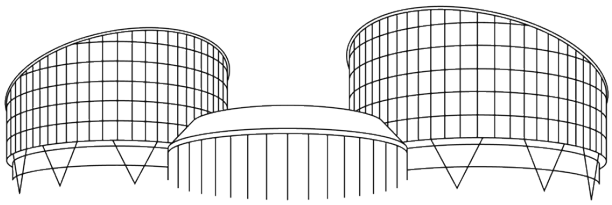

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

Application no. 60596/09
Maya OKROSHIDZE and Giorgi OKROSHIDZE
against Georgia

The European Court of Human Rights (Third Section), sitting on 11 December 2012 as a Committee composed of:

Luis López Guerra, *President,*
Nona Tsotsoria,
Valeriu Griţco, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above application lodged on 23 October 2009,

Having regard to the formal declaration accepting a friendly settlement of the case,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. Mrs Maya Okroshidze ("the first applicant") and Mr Giorgi Okroshidze ("the second applicant") are Georgian nationals who were born in 1968 and 2007 respectively and live in Tbilisi. They are represented before the Court by Ms Natia Katsitadze, a lawyer of the Georgian Young Lawyers' Association (GYLA) in Tbilisi, as well as by Mr Philip Leach and Ms Joanna Evans, of the European Human Rights Advocacy Centre (EHRAC) in London.

2. The Georgian Government ("the Government") were represented by their Agent, Mr Levan Meskhoradze, of the Ministry of Justice.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. On 2 August 2007 the first applicant gave birth to a son, the second applicant, out of wedlock.

5. On 28 January 2008 the first applicant lodged a civil action against G.S.-shvili, with whom she allegedly had been in a relationship since 2004, in order to establish paternity for the second applicant and obtain child maintenance.

6. In the course of the proceedings, the Tbilisi City Court ordered a DNA blood test. The test was carried out by the National Forensic Bureau at the Ministry of Justice, and its results, issued on 18 April 2008, established that the probability that G.S.-shvili was the father of the second applicant amounted to 99.99% ("the DNA report").

7. In a judgment of 9 June 2008, the Tbilisi City Court dismissed the first applicant's action as unsubstantiated. Acknowledging that the DNA report had confirmed the fact of biological paternity, the court reasoned that the bloodline between the second applicant and the respondent was not sufficient for the establishment of civil paternity, within the meaning of Article 1190 § 3 of the Civil Code. The court stated that, the biological link being immaterial, the primary importance should rather be attached, within the meaning of the above-mentioned provision of the Civil Code, to "circumstances which could prove the fact of a family-like cohabitation between the respondent and the mother of the child, the fact of having jointly run a household or of the respondent's participation in the upbringing of the child". However, the court concluded, the first applicant failed to prove that any such factual circumstances had existed.

8. The judgment of 9 June 2008 was upheld by the Tbilisi Court of Appeal on 23 October 2008, and on 23 April 2009 the Supreme Court of Georgia rejected the applicant's cassation appeal as inadmissible.

B. Relevant domestic law

9. Prior to 20 December 2011, that is when the domestic proceedings in the present case were still pending, Article 1190 § 3 of the Civil Code read as follows:

Article 1190 § 3

> "When establishing paternity, the court shall have regard to whether the mother and the respondent [putative father] have cohabitated and jointly kept a household prior to the birth of the child or have contributed together to the upbringing and nurture of the child or to a document which proves with sufficient certainty that the fact of paternity has been conceded to by the respondent."

10. On 20 December 2011 Article 1190 of the Civil Code, notably its paragraphs 3 and 4, were amended in order for the results of a DNA test to become the foremost ground for the establishment of civil paternity, followed by such other factors as those which had been mentioned in the previous version of Article 1190 § 3 of the Civil Code. Thus, the amended provisions of the Code currently read as follows:

Article 1190 §§ 3 and 4

> "The court shall establish paternity on the basis of the results (evidence) of a biological (genetic) or anthropological examination.
>
> If it is not possible to establish paternity on the basis of the grounds mentioned in paragraph 3, the court shall have regard to whether the mother and the respondent [putative father] have cohabitated and jointly kept a household prior to the birth of the child or have contributed together to the upbringing and nurture of the child or to a document or factual circumstances which prove with sufficient certainty that the fact of paternity has been conceded to by the respondent."

11. Pursuant to Article 46 § 1 (a) and (e) of the Code of Civil Procedure, claimants in proceedings concerning the issues of, respectively, child maintenance payments and alleged breach of minors' rights shall be exempted from any court fees.

12. According to Article 53 of the Code of Civil Procedure, a winning party in a civil dispute is entitled to seek reimbursement from the opponent of all the costs and expenses incurred in the course of the relevant court proceedings.

13. Article 423 § 1 (g) of the Code on Civil Procedure reads as follows:

> "A final and enforceable judgment can be reviewed on the basis of newly discovered circumstances, if ... (e) the European Court of Human Rights has established in a final judgment (or in a decision) a breach of a provision of the Convention or of the Protocols thereto and the impugned [domestic] judgment is based on that breach."

COMPLAINTS

14. Relying on Articles 8, 13 and 14 of the Convention, Article 1 of Protocol No. 1 and Article 1 of Protocol No. 12, the applicants complained about the domestic courts' refusal to accept the DNA results as the ground for the establishment of civil paternity and thus to provide for child maintenance payments.

THE LAW

15. On 15 February 2011 the Court communicated, under Article 8 of the Convention, the applicants' complaint about the domestic courts' refusal to establish civil paternity despite the confirmation of the fact of the biological paternity by the results of the qualified DNA test.

16. By letters of 7 September and 26 October 2012, the applicants and the Government, respectively, informed the Court that they wished to effect a friendly settlement of the case, for which purpose both parties agreed to the terms of the following declaration:

> "1. The Government acknowledge that there were deficiencies in the Civil Code which prevented the applicants from comprehensively exercising their rights under Article 8 of the Convention.
>
> 2. The parties note that Article 1190 of the Civil Code was amended on 20 December to read as follows: [for the citation of the provisions, see paragraph 10 above]
>
> 3. The Government acknowledge that
>
> (i) the applicants have become entitled to apply for the reopening of the initial civil proceedings at the domestic level (pursuant to Article 423 § 1 (g) of the Code of Civil Procedure) in order to have paternity established and child maintenance paid from the date of the first institution of the initial proceedings on 28 January 2008;
>
> (ii) paternity shall be established on the basis of, *inter alia*, the results of the DNA test that has already been undertaken by the second applicant;
>
> (iii) the applicants shall be exempted, in accordance with Article 46 § 1 (a) and/or (e) of the Code of Civil Procedure, from any court fees that might be applicable to such proceedings;
>
> (iv) the applicants shall be entitled, in accordance with Article 53 of the Code of Civil Procedure, to seek reimbursement of all their costs and expenses incurred in the course of the domestic proceedings starting from the date of the initial commencement of these proceedings on 28 January 2008.
>
> 4. The Government agree to pay the applicants a sum of 3,000 (three thousand) Euros in respect of damages.
>
> 5. The Government agree to pay the applicants a sum of 1,278.9 Euros and 1,797.5 United Kingdom pounds sterling (2,228.37[1]) in respect of costs and expenses incurred before the Court.
>
> 6. The applicants agree to waive any further claims against the Government in respect of the facts giving rise to their application in the present case.

[1] An approximate conversion is given in accordance with the exchange rate of the United Kingdom pound sterling (GBP) to the euro on 31 October 2012.

7. The parties accordingly agree that the Court shall strike the case out of its list of cases pursuant to Article 39 § 3 of the Convention, and note that, pursuant to Article 39 § 4, the case will be transmitted to the Committee of Ministers which shall supervise the execution of the terms of the friendly settlement."

17. The Court takes note of the friendly settlement reached between the parties. It is satisfied that the settlement is based on respect for human rights as defined in the Convention and its Protocols and finds no reasons to justify a continued examination of the application.

18. The Court further considers that the sums payable by the Government should be converted into the national currency of the respondent State at the rate applicable at the date of payment, and paid within three months of the date of notification of the Court's decision issued in accordance with Article 39 § 3 of the European Convention on Human Rights. In the event of failure to settle within this period, simple interest shall be payable on the amount in question at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points.

In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases in accordance with Article 39 of the Convention.

Marialena Tsirli
Deputy Registrar

Luis López Guerra
President