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

SECOND SECTION

CASE OF L. v. THE NETHERLANDS

(Application no. 45582/99)

JUDGMENT

STRASBOURG

1 June 2004

FINAL

01/09/2004

In the case of L. v. the Netherlands,

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

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr C. BÎRSAN,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN,
Mrs A. MULARONI, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 11 May 2004,

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

PROCEDURE

1. The case originated in an application (no. 45582/99) against the Kingdom of the Netherlands lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Netherlands national, Mr L. ("the applicant"), on 2 December 1998.

2. The applicant was represented by Ms E.J. Moree, a lawyer practising in The Hague. The Netherlands Government ("the Government") were represented by their Agent, Mrs J. Schukking, of the Netherlands Ministry of Foreign Affairs.

3. The applicant alleged that the rejection of his request for access to his daughter, born out of wedlock, amounted to a breach of his right to respect for his family life within the meaning of Article 8 of the Convention and that in this respect he was the victim of discriminatory treatment in violation of Article 14.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 30 September 2003, the Chamber declared the application admissible.

6. The applicant, but not the Government, filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1975 and lives in Breda. He had a relationship with Ms B. from mid-1993. On 14 April 1995 a daughter, named A., was born to Ms B. and the applicant.

8. Pursuant to Article 1:287 § 1 of the Civil Code (*Burgerlijk Wetboek*), as then in force, Ms B. obtained guardianship (*voogdij*) of A. The applicant was appointed as A.'s auxiliary guardian (*toeziend voogd*) on 19 May 1995 by the Enschede District Court judge (*kantonrechter*). The applicant's auxiliary guardianship ended on 2 November 1995, when an amendment to the Civil Code came into force abolishing that function.

9. The applicant and Ms B. did not formally cohabit, but the applicant visited her and A. on a regular basis. He also babysat and took care of A. on several occasions. Ms B. sometimes consulted the applicant about A.'s hearing problems. The applicant did not formally recognise (*erkenning*) A., as Ms B. refused to give her permission and her family also opposed such recognition. Although the applicant could have sought judicial consent for recognising A. (see paragraph 17 below), he did not avail himself of this possibility, considering that it would stand little chance of success. Moreover, the applicant preferred to respect the position adopted by Ms B. and her relatives, and maintain the *de facto* family ties he had with his daughter rather than establish formal legal ties with her.

10. In August 1996 the applicant's relationship with Ms B. broke down. On 23 January 1997 the applicant requested the Almelo Regional Court (*arrondissementsrechtbank*) to grant him access (*omgangsregeling*) to A. one weekend every fortnight and some weeks during the holiday period. In those proceedings Ms B. argued primarily that the applicant's request should be declared inadmissible in that there had never been any family life within the meaning of Article 8 of the Convention between the applicant and A. and, in so far as family life had existed, it had ceased to exist after the end of her relationship with the applicant. In the alternative, Ms B. argued that to grant the applicant access would not be in A.'s interests. Ms B. further submitted that the applicant had behaved badly towards her (violence and financial abuse) and had shown little interest in A. She indicated, lastly, that A.'s hearing was impaired and that her daughter thus required a special approach of which she deemed the applicant incapable.

11. By a decision of 26 February 1997, the Almelo Regional Court accepted that there was family life within the meaning of Article 8 of the Convention between the applicant and A., and that this family life had not ceased to exist since the breakdown of the applicant's relationship with Ms B. It consequently declared the applicant's request admissible. However,

given the difficulties between the applicant and Ms B., the Regional Court decided to order the Child Care and Protection Board (*Raad voor de Kinderbescherming*) to conduct an investigation and to report to it on the feasibility of an access arrangement.

12. Ms B. filed an appeal against this decision with the Arnhem Court of Appeal (*gerechtshof*). By a decision of 16 September 1997, the Court of Appeal quashed the decision of 26 February 1997 and declared the applicant's request inadmissible. In its decision, the Court of Appeal stated:

> "3.1 Out of the parties' relationship (lasting from mid-1993 to August 1996), A. was born. Mr L. is the biological father of A. He has not recognised the child. The mother holds parental authority over A. by law.
>
> ...
>
> 4.5 In addition to what is stated under 3.1, the following, as contended by one side, and not, or insufficiently, disputed by the other, has been established or become plausible.
>
> The father was present at A.'s birth. He has never been formally registered at the mother's address, but (up to August 1996) regularly visited the mother. He has also changed A.'s nappy a few times [*enkele malen*] and has babysat her once or twice [*een enkele keer*], but not since August 1996. Further, the mother has on several occasions [*verschillende keren*] had contact by telephone with the father about (the hearing problems of) A.
>
> 4.6 In the light of the above facts and circumstances, it has been insufficiently established that the father has a close personal relationship with the child – who at the time of the breakdown of the parties' relationship was one year old – or that there is a link between him and the child that can be regarded as 'family life' within the meaning of Article 8 of the Convention. The further circumstances relied on by the father, from which it would appear that he has a close personal relationship with the child, have – in contrast to the substantiated denial thereof by the mother – not been established. The terminology used by the mother in the proceedings (she spoke about 'a relationship until October 1996' and 'my ex-partner') cannot, either in itself or in connection with the above circumstances, lead to a different conclusion.
>
> ...
>
> 5.1 On the basis of the above considerations, the impugned decision is quashed, and the father's request is declared inadmissible."

13. The applicant's subsequent appeal on points of law was dismissed by the Supreme Court (*Hoge Raad*) on 5 June 1998. The Supreme Court rejected the argument that the mere biological link between the applicant and A. was sufficient to attract the protection of Article 8 of the Convention. It held that "family life" for the purposes of Article 8 implied the existence of further personal ties in addition to biological paternity. As to the lack of existence of such further personal ties, it accepted the findings of the Court of Appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Recognition of paternity at the material time

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

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

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

17. Recognition without the mother's prior written consent was void (Article 1:224 § 1 (d) of the Civil Code). However, in view of the right of the father and the child to respect for their "family life", as guaranteed by Article 8 of the Convention, the Supreme Court construed this provision in such a way that the mother's effective right of veto could be overridden, if she abused it, by alternative judicial consent. However, such judicial consent could only be sought by a biological father whose relationship with his child was such that it should be considered to amount to "family life" within the meaning of Article 8 of the Convention (see *Hoge Raad*, 8 April 1988, *Nederlandse Jurisprudentie* (Netherlands Law Reports – (NJ)) 1989, no. 170). In a situation where the mother was raising the child alone, judicial consent would only be given if the mother had no interest warranting protection in refusing to give her permission (see *Hoge Raad*, 22 February 1991, NJ 1991, no. 376, and *Hoge Raad*, 17 December 1999, NJ 2000, no. 121).

B. Recognition of paternity after 1 April 1998

18. On 1 April 1998 a new Article 1:204 of the Civil Code came into force. It still provides that, for a man to recognise a child who is not yet 16 years old as his, the prior written consent of the mother is required (Article 1:204 § 1 (c)). If the mother has not given her consent, it may be replaced by the consent of the regional court (Article 1:204 § 3). However, the man who seeks alternative judicial consent must be the child's biological father; in addition, recognition must not be detrimental to the mother's relationship with the child or to the child's own interests (ibid.). Furthermore, the child's written permission is required if he or she has reached the age of 12 (Article 1:204 § 1 (d)).

19. According to the Supreme Court's case-law under Article 1:204 § 3 of the Civil Code, the procedure for obtaining judicial consent must entail a judicial balancing exercise between the interests of the persons concerned, the point of departure being that both the child and its biological father should in principle be entitled to have their relationship acknowledged in law as a legally recognised family relationship (*familierechtelijke betrekking*). However, the judge must balance the father's interests in obtaining recognition against any conflicting interests of the mother or the child or both. The mother's interest is defined in Article 1:204 § 3 as having an undisturbed relationship with the child (see *Hoge Raad*, 16 February 2001, *Rechtspraak van de Week* (Weekly Law Reports) 1989, no. 52).

20. Also on 1 April 1998, Article 1:207 was introduced into the Civil Code, pursuant to which a child may request the regional court to issue a judicial declaration of paternity (*gerechtelijke vaststelling van vaderschap*) in order to have a legal tie established between him or her and the biological father. No time-limit applies for lodging such a request.

C. Maintenance obligations

21. Pursuant to Article 1:392 of the Civil Code, parents – namely, the persons who have become a legal parent of a child either *ipso jure*, or through recognition, a judicial declaration of paternity, or adoption – are obliged to provide for the maintenance of their minor children. The absence of recognition of a child does not absolve the biological father of his maintenance obligations towards this child. Pursuant to Article 1:394 of the Civil Code, the biological father of an unrecognised child remains liable to pay maintenance until the child has come of age. Until 1 April 1998, when this provision was amended as a consequence of the introduction of the possibility of seeking a judicial declaration of paternity, Article 1:394 § 3 provided that the supposed biological father of an illegitimate, unrecognised child was the man who had had intercourse with the mother between the 307th and 179th day before the birth of the child.

D. Access rights

22. Access rights are regulated by Articles 1:337a-h of the Civil Code.

23. The relevant part of Article 1:377a of the Civil Code provides as follows:

> "1. The child and the parent who does not have custody are entitled to have access to each other [*omgang met elkaar*].
>
> 2. The judge shall, at the request of the parents or of one of them, establish an arrangement, for a definite or indefinite period, for the exercise of the right of access or shall deny, for a definite or indefinite period, the right of access.
>
> 3. The judge shall only deny the right of access if:
>
> (a) access would seriously impair the mental or physical development of the child;
>
> (b) the parent is deemed to be manifestly unfit for or manifestly incapable of access;
>
> (c) the child is at least 12 years old and has, when being heard, manifested serious objections against allowing the parent access; or
>
> (d) access would for another reason be contrary to the weighty interests [*zwaarwegende belangen*] of the child."

24. The relevant part of Article 1:377f of the Civil Code reads as follows:

> "1. Without prejudice to the provisions of Article [1:]377a [of the Civil Code], the judge may, on request, establish an access arrangement between the child and the person having close personal ties with it. The judge may reject the request where the interests of the child oppose granting it, or where the child is at least 12 years old and objects to it."

25. According to the case-law of the Supreme Court, a request by a biological father for access to a child whose paternity he has not recognised is to be examined under Article 1:337f, and not under Article 1:337a, of the Civil Code, in that he is not a "parent" within the meaning of Article 1:337a. Where the father of a child born out of wedlock has recognised the child, a request for access is to be examined under Article 1:377a of the Civil Code (see *Hoge Raad*, 15 November 1996, NJ 1997, no. 423, and *Hoge Raad*, 26 November 1999, NJ 2000, no. 85).

26. In several cases in which a biological father has claimed a right of access to his child under Article 8 of the Convention, the Supreme Court has held that mere biological fatherhood in itself is insufficient to establish the existence of "family life". According to the Supreme Court, such a relationship can only be regarded as involving "family life" where there are additional circumstances, such as regular contact with the child, from which it ensues that the tie with the father can be regarded as constituting "family

life" (see *Hoge Raad*, 26 January 1990, NJ 1990, no. 630; *Hoge Raad*, 19 May 2000, NJ 2000, no. 545; and *Hoge Raad*, 29 September 2000, NJ 2000, no. 654).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

27. The applicant complained that the rejection of his request for access to his daughter born out of wedlock was in violation of his rights under Article 8 of the Convention, the relevant part of which reads:

> "1. Everyone has the right to respect for his ... family life ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. The parties' submissions

1. The applicant

28. The applicant submitted, relying on the Court's findings as to the existence of family life for the purposes of Article 8 in *Boughanemi v. France* (judgment of 24 April 1996, *Reports of Judgments and Decisions* 1996-II, pp. 607-08, § 35) and *C. v. Belgium* (judgment of 7 August 1996, *Reports* 1996-III, pp. 922-23, § 25), that the only important factor in determining the existence of "family life" was the tie between himself and A. already created by the mere fact that he was her biological father, without the need to rely on additional circumstances to demonstrate the existence of other bonds between them. According to the applicant, family life within the meaning of Article 8 of the Convention existed *ipso jure* between him and A. on the ground of his biological fatherhood.

29. The applicant further pointed out that he had been A.'s auxiliary guardian until the abolition of that function on 2 November 1995. No objection had been raised by either Ms B. or the domestic court at the time concerning this appointment. In this connection he submitted that, according to the case-law of the Netherlands Supreme Court, the exercise of the duties of an auxiliary guardian could well make direct contact with the minor child necessary or desirable (see *Hoge Raad*, 22 February 1991, NJ 1992, no. 23), that the powers of the auxiliary guardian were not purely of a formal nature

and that the exercise of such powers was not completely detached from the child (see *Hoge Raad*, 7 June 1991, NJ 1992, no. 25). He argued that it clearly appeared from various publications by learned authors that the social importance of an auxiliary guardian was greater than might be expected from his or her legal duties.

30. As to the question whether the family life between the applicant and A. had been destroyed by subsequent events, the applicant considered that the period of five months which had elapsed between the termination of his relationship with A.'s mother and his request for access was insufficient to conclude that his bond with A. had ceased to exist. In the applicant's opinion, the domestic decision declaring inadmissible his request for access to A. had therefore violated his right guaranteed by Article 8 to respect for his family life with her.

2. The Government

31. The Government submitted that, under Netherlands law, access arrangements could be made under Article 1:377a of the Civil Code between the child and a legal parent, and under Article 1:377f of the Civil Code between the child and a third person who had a close personal relationship with the child. The biological father was considered a legal parent if he was married to the child's mother or if he had recognised the child. In such a situation, the legal tie between the father and the child constituted *ipso jure* family life within the meaning of Article 8 of the Convention.

32. A biological father having no legal tie with his child could nevertheless seek access but, in order to succeed, had to have a close personal relationship with the child. The notion of "close personal relationship" was interpreted in the domestic case-law – as on appeal in the present case – as a tie between the biological father and his child which, on the basis of various and sufficiently established circumstances, could be deemed to constitute "family life" within the meaning of Article 8 of the Convention.

33. According to the Government, this approach was in full conformity with the Court's established case-law under Article 8, from which it could not be deduced that a mere biological tie would in itself already create a bond amounting to family life for the purposes of Article 8. In this connection, the Government referred to the Court's judgment in *K. and T. v. Finland* ([GC], no. 25702/94, § 150, ECHR 2001-VII), in which it had reiterated that the existence or non-existence of family life within the meaning of Article 8 of the Convention was essentially a question of fact depending on the real existence in practice of close personal ties. The crucial question was therefore whether the applicant had adduced and satisfactorily established sufficient additional circumstances to render

plausible his claim that the tie between him and A. constituted family life within the meaning of Article 8 of the Convention.

34. On the basis of the findings of the Court of Appeal in its decision of 16 September 1997, as upheld by the Supreme Court on 5 June 1998, the Government considered that the applicant had failed to do so. They therefore considered that the tie between the applicant and A. did not amount to family life for the purposes of Article 8 of the Convention. Consequently, the impugned decision could not be regarded as having infringed the applicant's rights guaranteed by that Convention provision.

B. The Court's assessment

35. The Court reiterates that the notion of "family life" under Article 8 of the Convention is not confined to marriage-based relationships and may encompass other *de facto* "family" ties where the parties are living together out of wedlock. A child born out of such a relationship is *ipso jure* part of that "family" unit from the moment, and by the very fact, of its birth. Thus, there exists between the child and the parents a relationship amounting to family life (see *Keegan v. Ireland*, judgment of 26 May 1994, Series A no. 290, pp. 17-18, § 44; *Elsholz v. Germany* [GC], no. 25735/94, § 43, ECHR 2000-VIII; and *Yousef v. the Netherlands*, no. 33711/96, § 51, ECHR 2002-VIII).

36. Although, as a rule, cohabitation may be a requirement for such a relationship, exceptionally other factors may also serve to demonstrate that a relationship has sufficient constancy to create *de facto* "family ties" (see *Kroon and Others v. the Netherlands*, judgment of 27 October 1994, Series A no. 297-C, pp. 55-56, § 30). The existence or non-existence of "family life" for the purposes of Article 8 is essentially a question of fact depending upon the real existence in practice of close personal ties (see *K. and T. v. Finland*, cited above, § 150). Where it concerns a potential relationship which could develop between a child born out of wedlock and its natural father, relevant factors include the nature of the relationship between the natural parents and the demonstrable interest in and commitment by the father to the child both before and after its birth (see *Nylund v. Finland* (dec.), no. 27110/95, ECHR 1999-VI).

37. In the present case, the Court notes that, unlike the situation in *Sahin v. Germany* ([GC], no. 30943/96, § 12, ECHR 2003-VIII) and *Sommerfeld v. Germany* ([GC], no. 31871/96, §§ 11-12, ECHR 2003-VIII), the applicant has not sought to recognise A., and he has never formed a "family unit" with A. and her mother as they have never cohabited. Consequently, the question arises whether there are other factors demonstrating that the applicant's relationship with A. has sufficient constancy and substance to create *de facto* "family ties". The Court does not agree with the applicant that a mere biological kinship, without any further legal or factual elements

indicating the existence of a close personal relationship, should be regarded as sufficient to attract the protection of Article 8.

38. However, in the instant case the Court notes that A. was born from a genuine relationship between the applicant and Ms B. that lasted for about three years and that, until this function was abolished when A. was about 7 months old, the applicant was A.'s auxiliary guardian. It observes that the applicant's relationship with Ms B. ended in August 1996, when A. was about 16 months old.

39. The Court further notes that, although the applicant never cohabited with Ms B. and A., he was present when A. was born, that –from A.'s birth until August 1996, when his relationship with A.'s mother ended – he visited Ms B. and A. at unspecified regular intervals, that he changed A.'s nappy a few times and babysat her once or twice, and that on several occasions he had contact with Ms B. about A.'s impaired hearing.

40. In these circumstances the Court concludes that, when the applicant's relationship with Ms B. ended, there existed – in addition to biological kinship – certain ties between the applicant and A. which were sufficient to attract the protection of Article 8 of the Convention.

41. Consequently, the decision of the Court of Appeal, as upheld by the Supreme Court, not to examine the merits of the applicant's request for access to A. but to declare it inadmissible on the basis of a finding that there was no family life between them was in breach of the applicant's rights under Article 8 of the Convention.

42. It follows that there has been a violation of this provision.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

43. The applicant complained under Article 14 of the Convention taken in conjunction with Article 8 that he had been discriminated against in that, for the purposes of an access arrangement, his biological tie with A. had not been accepted as constituting "family life", whereas the existence of "family life" was automatically assumed by the Netherlands judicial authorities in the case of an unmarried biological father who had recognised the child.

Article 14 of the Convention provides 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."

44. The Court notes that it has already examined the arguments now raised by the applicant under Article 14 of the Convention in its considerations under Article 8. Having regard to its findings with respect to Article 8 (see paragraph 37 above), it does not find it necessary to examine the same issue under Article 14.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant sought 10,000 euros (EUR) in compensation for non-pecuniary damage, attributable to the anxiety and distress he had felt as a result of the denial of contact with A. since 1996 and his consequential alienation from his daughter.

47. The Government considered a global sum of EUR 5,000 appropriate.

48. The Court finds, in the circumstances, that the applicant must have suffered feelings of frustration, uncertainty and anxiety which cannot be compensated solely by the finding of a violation. Making an assessment on an equitable basis, as required by Article 41, the Court awards the applicant EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

49. The applicant claimed EUR 415.41 for legal costs and expenses incurred before the domestic courts which were not covered by his legal-aid award under the domestic legal-aid scheme. He further claimed EUR 4,903 for the costs and expenses incurred in the proceedings before the Court, corresponding to 119 hours of legal work. He explained that he had also been granted legal aid under the domestic legal-aid scheme for the proceedings before the Court, but only on a provisional basis. This meant that the Netherlands Legal Aid Board (*Raad voor de Rechtsbijstand*) would only take a definite decision once the proceedings before the Court had ended. As his income had increased in the meantime, it was unlikely that the Netherlands Legal Aid Board would grant him legal aid for the Convention proceedings.

50. The Government submitted that the applicant had not demonstrated that he would no longer be eligible for subsidised legal assistance under the domestic legal-aid scheme and that, therefore, it was uncertain that the applicant would not be eligible, either fully or partly, for legal aid under the domestic legal-aid scheme in respect of the Convention proceedings. The Government further considered the applicant's claim for legal costs in respect of the Convention proceedings excessive, as the issues raised in these proceedings significantly overlapped those that had already been brought before the domestic courts.

51. According to the Court's consistent case-law, to be awarded costs and expenses the injured party must have incurred them in order to seek prevention or rectification of a violation of the Convention, to have the violation established by the Court and to obtain redress for it. It must also be shown that the costs were actually and necessarily incurred and that they are reasonable as to quantum (see, among other authorities, *Wettstein v. Switzerland*, no. 33958/96, § 56, ECHR 2000-XII).

52. The Court finds the applicant's claim for costs and expenses excessive. According to the bill for fees submitted, the applicant's lawyer apparently worked a total of 119 hours on the applicant's case before the Court. Having regard to the nature of the case and making an assessment on an equitable basis, the Court awards the applicant EUR 2,500 for costs and expenses, from which should be deducted any amount for legal aid awarded under the domestic legal-aid scheme in respect of the Convention proceedings.

C. Default interest

53. 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

1. *Holds* by six votes to one that there has been a violation of Article 8 of the Convention;

2. *Holds* unanimously that it is not necessary to examine the complaint under Article 14 of the Convention;

3. *Holds* by six votes to one
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 5,000 (five thousand euros) in respect of non-pecuniary damage;
      (ii) EUR 2,500 (two thousand five hundred euros) in respect of costs and expenses, less any amount awarded to the applicant under the domestic legal-aid scheme in respect of the Convention proceedings;
      (iii) any tax that may be chargeable on the above amounts;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 1 June 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Mrs Mularoni is annexed to this judgment.

J.-P.C.
S.D.

DISSENTING OPINION OF JUDGE MULARONI

I disagree with the majority that there has been a violation of Article 8 of the Convention.

The Court held that, as the applicant had never sought to recognise the child and had never formed a "family unit" with A. and her mother as they had never cohabited, the question arose whether there were other factors demonstrating that the applicant's relationship with A. had sufficient constancy and substance to create *de facto* "family ties", as mere kinship without any further legal or factual elements indicating the existence of a close personal relationship cannot be regarded as sufficient to attract the protection of Article 8 (see paragraph 37 of the judgment).

On this point, I have noted that in the course of the domestic proceedings it was established that the applicant was present when A. was born on 14 April 1995 and that – from A.'s birth until August 1996 when his relationship with A.'s mother ended – the applicant's involvement with A. consisted in having visited her at unspecified regular intervals, having changed A.'s nappy a few times, having babysat her once or twice and in having had some contact with A.'s mother about the child's impaired hearing.

I consider that, given the nature and degree of the applicant's contacts with A., the impugned decision to declare inadmissible the applicant's request for access to A. on the basis of a finding that there was no family life between them does not disclose any appearance of a violation of Article 8 of the Convention.