

EUROPEAN COURT OF HUMAN RIGHTS

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12.1.2006

Press release issued by the Registrar

CHAMBER JUDGMENT MIZZI v. MALTA

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Mizzi v. Malta* (application no. 26111/02).

The Court held unanimously that there had been:

- a **violation of Article 6 § 1** (right to a fair hearing within a reasonable time) of the European Convention on Human Rights;
- a **violation of Article 8** (right to respect for private and family life) of the Convention;
- a **violation of Article 14** (prohibition of discrimination) taken in conjunction with **Article 6 § 1** and **Article 8**.

Under Article 41 (just satisfaction), the Court awarded the applicant, by six votes to one, 5,000 euros (EUR) for non-pecuniary damage and EUR 40,000 for costs and expenses. (The judgment is available only in English.)

1. Principal facts

The applicant, Maurice Mizzi, is a Maltese national who born in 1936 and lives in Bidnija (Malta).

The applicant is a well-known businessman in Malta. In 1966, his wife X became pregnant. In March 1967 the applicant and X separated and stopped living together and, on 4 July 1967, X gave birth to a daughter, Y. The applicant was automatically considered to be Y's father under Maltese law and was registered as her natural father. Following a DNA test which, according to the applicant, established that he was not Y's father, the applicant tried unsuccessfully to bring civil proceedings to repudiate his paternity of Y.

According to the Maltese Civil Code, a husband could challenge the paternity of a child conceived in wedlock if he could prove both the adultery of his wife and that the birth had been concealed from him. This latter condition was dropped when the law was amended in

¹ Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

1993 and a time limit of six months from the day of the child's birth was set as the cut off point for introducing such proceedings.

In May 1997 the Civil Court accepted the applicant's request for a declaration that, notwithstanding the provisions of the Civil Code, he had a right to proceed with a paternity action and found that there had been a violation of Article 8 of the European Convention on Human Rights. That judgment was subsequently revoked by the Constitutional Court.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 5 July 2002 and declared admissible on 9 December 2004.

Judgment was given by a Chamber of seven judges, composed as follows:

Christos **Rozakis** (Greek), *President*,
Loukis **Loucaides** (Cypriot),
Françoise **Tulkens** (Belgian),
Nina **Vajić** (Croatian),
Dean **Spielmann** (Luxemburger),
Sverre Erik **Jebens** (Norwegian), *judges*,
Justice Joseph **Filletti** (Maltese), *ad hoc judge*,

and also Santiago **Quesada**, *Deputy Section Registrar*.

3. Summary of the judgment¹

Complaints

The applicant complained that he was denied access to a court and that the irrefutable presumption of paternity applied in his case amounted to a disproportionate interference with his right for respect of private and family life. He also complained that he suffered discrimination, because other parties with an interest in establishing paternity in the case were not subject to the same strict conditions and time limits. He relied on Article 8 (right to respect for private and family life), Article 6 § 1 (access to court) and Article 14 (prohibition of discrimination).

Decision of the Court

Article 6 § 1

The Court considered that the applicant had an arguable right to deny paternity under Maltese law. Furthermore, it held that the fact that a time-limit precluded the applicant from benefiting from the 1993 amendments did not impair the existence in itself of that right and as such was only a procedural pre-condition for having access to the domestic courts.

¹ This summary by the Registry does not bind the Court.

While it noted that it was open to the applicant to file an application before the Civil Court, the Court stressed that a degree of access to a court limited to the right to ask a preliminary question could not be considered sufficient to secure the applicant's "right to a court". It recalled that the Civil Court's favourable decision was revoked by the Constitutional Court and held that this, coupled with the wording of the relevant domestic provisions, deprived the applicant of the possibility of obtaining a judicial determination of his claim.

The Court accepted that under certain circumstances, the institution of time-limits for the introduction of a paternity action might serve the interests of legal certainty and the interests of the children. However, the application of the rules in question should not have prevented litigants from making use of an available remedy. The Court found that the practical impossibility for the applicant to deny his paternity from the day Y's was born until the present day impaired, in essence, his right of access to a court.

The Court held that the domestic courts had failed to strike a fair balance between the applicant's legitimate interest of having a judicial ruling over his presumed paternity and the protection of legal certainty and of the interests of the other people involved in his case. The interference thus imposed an excessive burden on the applicant. There had therefore been a violation of Article 6 § 1.

Article 8

The Court observed that the applicant had never had the possibility of having the results of his daughter's blood test examined by a tribunal. It was only after the 1993 amendments removing the condition concerning concealment, that the applicant would have had the right to contest paternity on the basis of scientific evidence and of proof of adultery, had it been possible to lodge the action within six months of Y's birth.

The Court noted that the only means of redress open to him to obtain the reopening of the time-limit was to apply to the Civil Court. Had the Civil Court and the Constitutional Court accepted his request, they would have adequately secured the interests of the applicant who had legitimate reasons to believe that Y might not be his daughter and wished to challenge in court the legal presumption of his paternity.

The Court was not convinced that such a radical restriction of the applicant's right to take legal action was "necessary in a democratic society". It found that the potential interest of Y to enjoy the "social reality" of being the daughter of the applicant could not outweigh the latter's legitimate right of having at least one occasion to reject the paternity of a child who, according to scientific evidence that the applicant alleged to have obtained, was not his own.

The Court considered that the fact that the applicant was never allowed to disclaim paternity was not proportionate to the legitimate aims pursued. It followed that a fair balance had not been struck between the general interest of the protection of legal certainty of family relationships and the applicant's right to have the legal presumption of his paternity reviewed in the light of the biological evidence. Therefore, the domestic authorities failed to secure to the applicant the respect for his private life, to which he was entitled and there had been a violation of Article 8.

Article 14 in conjunction with Article 6 § 1 and Article 8

The Court observed that in bringing an action to contest his paternity the applicant was subject to time-limits which did not apply to other "interested parties". The Court found that

the rigid application of the time-limit along with the Constitutional Court's refusal to allow an exception deprived the applicant of the exercise of his rights guaranteed by Articles 6 and 8 which were and still are, on the contrary, enjoyed by the other interested parties.

It followed that there had been a violation of Article 14 read in conjunction with Articles 6 § 1 and 8.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. Since 1 November 1998 it has sat as a full-time Court composed of an equal number of judges to that of the States party to the Convention. The Court examines the admissibility and merits of applications submitted to it. It sits in Chambers of 7 judges or, in exceptional cases, as a Grand Chamber of 17 judges. The Committee of Ministers of the Council of Europe supervises the execution of the Court's judgments.