

Press release issued by the Registrar

**CHAMBER JUDGMENT
JÄGGI v. SWITZERLAND**

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Jäggi v. Switzerland* (application no. 58757/00).

The Court held

- by five votes to two that there had been **a violation of Article 8** of the European Convention on Human Rights (right to respect for private life) on account of the fact that it had been impossible for the applicant to obtain a DNA analysis of the mortal remains of his putative biological father;
- unanimously that no separate issue arose regarding the question whether there had been a violation of Article 14 of the Convention (prohibition of discrimination) taken together with Article 8.

The Court considered that the finding of a violation in itself constituted sufficient just satisfaction in respect of the non-pecuniary damage suffered by the applicant. Under Article 41 of the Convention (just satisfaction), the Court awarded the applicant 4,299 euros (EUR) for costs and expenses. (The judgment is available only in French.)

1. Principal facts

Andreas Jäggi is a Swiss national who was born on 26 July 1939 and lives in Geneva (Switzerland).

Shortly before the applicant's birth a State-appointed adviser brought an action against A.H., his putative father, seeking a declaration of paternity and the payment of a contribution towards his maintenance. The action was dismissed by the Geneva Court of First instance on 30 January 1948.

On registering the applicant's birth his mother declared that his father was A.H. The applicant was placed with a foster family. He was informed by his mother in 1958 that A.H. was his father.

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.

Mr Jäggi asserted that he had had regular contacts with A.H. and had received presents from him and the equivalent of EUR 6.40 each month until he came of age. A.H.'s family rejected those allegations, and A.H. always refused to submit to tests to establish his paternity.

In 1997 the applicant applied unsuccessfully to the Geneva University Institute of Forensic Medicine for a private paternity test. In the same year he paid the equivalent of EUR 1,657 to renew the lease for A.H.'s tomb until 2016.

In 1999 the applicant applied for revision of the judgment of 30 January 1948, requesting a DNA test on the mortal remains of A.H. His application was refused by the trial courts.

On 22 December 1999 the Federal Court dismissed an appeal by the applicant on the ground that at the age of 60 he had been able to develop his personality even in the absence of certainty as to the identity of his biological father.

2. Procedure and composition of the Court

The application was lodged on 6 July 2000.

Judgment was given by a Chamber of 7 judges, composed as follows:

Boštjan M. **Zupančič** (Slovenian), *President*,
John **Hedigan** (Irish),
Luzius **Wildhaber** (Swiss),
Lucius **Cafilisch** (Swiss)¹,
Vladimiro **Zagrebel'sky** (Italian),
Alvina **Gyulumyan** (Armenian),
Egbert **Myjer** (Netherlands), *judges*,

and also Vincent **Berger**, *Section Registrar*.

3. Summary of the judgment²

Complaints

The applicant complained that he had been unable to have a DNA test carried out on a deceased person with the aim of establishing whether that person was his biological father. He relied in particular on Article 8 of the Convention (right to respect for private and family life) and Article 14 (prohibition of discrimination).

Decision of the Court

Article 8

The Court considered that persons trying to establish their ancestry had a vital interest, protected by the Convention, in obtaining the information they needed in order to discover the truth about an important aspect of their personal identity. However, the need to protect

¹ Judge elected in respect of Liechtenstein.

² This summary by the Registry does not bind the Court.

third parties might exclude the possibility of compelling them to submit to any kind of medical analysis, particularly DNA tests. The Court therefore intended to gauge the relative weight of the conflicting interests, namely the applicant's right to discover his parentage against the right of third parties to the inviolability of the deceased's body, the right to respect for the dead and the public interest in the protection of legal certainty.

In the first place, the Court considered that an individual's interest in discovering his parentage did not disappear with age, on the contrary. Moreover, the applicant had always shown a real interest in discovering his father's identity, since he had tried throughout his life to obtain reliable information on the point. Such conduct implied moral and mental suffering, even though this had not been medically attested.

Secondly, the Court noted that in opposing the DNA test, which was a relatively unintrusive measure, A.H.'s family had not cited any religious or philosophical reasons. Moreover, if the applicant had not renewed the lease on A.H.'s tomb, the peace of the deceased and the inviolability of his mortal remains would already have been impaired in 1997. In any event, his body was due to be exhumed in 2016, when the current lease expired. The right to rest in peace therefore enjoyed only temporary protection.

In addition, the Court observed that the private life of the deceased person from whom it was proposed to take a DNA sample could not be impaired by such a request since it was made after his death. Lastly, the Court noted that the protection of legal certainty alone could not suffice as grounds to deprive the applicant of the right to discover his parentage.

That being the case, the Court considered that Switzerland had not secured to Mr Jäggi the right to respect for his private life and held that there had been a violation of Article 8.

Article 14

In view of the finding it had reached with regard to Article 8, the Court considered that it was not necessary to examine separately the complaint under Article 14.

Judge Hedigan expressed a dissenting opinion, joined by Judge Gyulumyan. This is annexed to the judgment.

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

Registry of the European Court of Human Rights

F – 67075 Strasbourg Cedex

Press contacts: Emma Hellyer (telephone: 00 33 (0)3 90 21 42 15)

Stéphanie Klein (telephone: 00 33 (0)3 88 41 21 54)

Beverley Jacobs (telephone: 00 33 (0)3 90 21 54 21)

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.