



German courts should have considered child's best interest when deciding about access rights of presumed biological father

In today's Chamber judgment in the case [Schneider v. Germany](#) (application no. 17080/07), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

A violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned the German courts' refusal to grant the applicant access to a boy who he claims is his biological son and whose legal father is the mother's husband.

Principal facts

The applicant, Michael Schneider, is a German national who was born in 1958 and lives in Fulda (Germany). Between May 2002 and September 2003, he had a relationship with a married woman, Mrs H., and claims to be the biological father of her son, F., born in March 2004, whose legal father is the mother's husband. The married couple now live in the United Kingdom with F., their older daughter and another child born in 2007. They acknowledge that Mr Schneider might be F.'s biological father, but claim that it could just as well be Mr H. and prefer not to verify paternity in the interest of their family.

During Mrs H.'s pregnancy, Mr Schneider accompanied her to at least two medical consultations and acknowledged paternity of the child to be born before the Youth Office. Subsequent to F.'s birth, in August 2004, Mr Schneider applied to the Fulda District Court, requesting access to F. twice a month and regular information about the boy's development. The court dismissed the request in October 2005, finding that Mr Schneider, even assuming that he was the boy's biological father, did not fall within the group of people who had a right of access under the relevant provisions of the German Civil Code. In particular, he was not the boy's legal father; his acknowledgement of paternity was not valid, as Mr H.'s paternity prevailed; he had no right to contest Mr H.'s paternity, as there was a social and family relationship between the latter and the boy; and Mr Schneider did not have close ties with the boy, as he had never lived with him.

In February 2006, the Frankfurt am Main Court of Appeal dismissed Mr Schneider's appeal, confirming the district court's findings. In September 2006, the Federal Constitutional Court declined to consider his constitutional complaint (file no. 1 BvR 1337/06). It held that the complaint was inadmissible in so far as he had complained about the lower courts' failure to determine his paternity of F., as Mr Schneider should have contested Mr H.'s paternity in separate proceedings under the Civil Code prior to lodging his constitutional complaint. As regards his complaint about the courts' refusal to

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here:

www.coe.int/t/dghl/monitoring/execution

grant him access to and information about F., his rights had not been breached, as the German Basic Law protected the relationship between a biological father - who was not the legal father - and his child only where there was a social relationship between them which was based on the father having borne actual responsibility for the child at least for a period of time.

Complaints, procedure and composition of the Court

Relying in particular on Article 8, Mr Schneider complained that the German courts refused to grant him access to the boy and information about his personal circumstances, and that the courts failed to investigate sufficiently the relevant facts concerning his relationship with his son, in particular his paternity and the question of whether access was in the child's best interest. He further complained that the court decisions discriminated against him, relying on Article 8 in conjunction with Article 14 (prohibition of discrimination).

The application was lodged with the European Court of Human Rights on 4 April 2007.

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

Dean **Spielmann** (Luxembourg), *PRESIDENT*,
Karel **Jungwiert** (the Czech Republic),
Boštjan M. **Zupančič** (Slovenia),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro-Lefèvre** (Monaco),
Ann **Power** (Ireland),
Angelika **Nußberger** (Germany), *JUDGES*,

and also Claudia **Westerdiek**, *SECTION REGISTRAR*.

Decision of the Court

Article 8

The Court found that the domestic courts' decisions to refuse Mr Schneider contact with and information about F., whom he presumed to be his son, constituted an interference with his rights under Article 8. It was true that, given that it had not been established that Mr Schneider was in fact F.'s biological father and that there had never been a close personal relationship between him and the boy, there had not been any existing "family life". However, that fact could not be held against Mr Schneider. Under the applicable provisions of the Civil Code, as interpreted by the domestic courts, his acknowledgement of paternity was not valid as Mr H.'s paternity prevailed. Separate paternity proceedings under the Civil Code – which in the Government's view Mr Schneider had failed to institute – would have been bound to fail on the basis of the existing domestic law. Moreover, such proceedings would have been aimed at obtaining the status of a legal parent, a more far-reaching objective than Mr Schneider's aim of establishing biological paternity for the purpose of access to the child. Furthermore, the boy's legal parents had refused his requests for access.

The Court noted that while Mr Schneider and Mrs H. had never lived together, it was uncontested that they had had a relationship - lasting for one year and four months – which was not merely haphazard. Mr Schneider had shown sufficient interest in F., having planned to have the child with Mrs H., having accompanied her to medical examinations and having acknowledged paternity even before the child's birth. The Court therefore did not exclude that Mr Schneider's intended relationship with the boy fell within the ambit of "family life" under Article 8. In any event, the question of whether Mr

Schneider had a right to access to and information about the boy, even if it fell short of family life, concerned an important part of his identity and thus his “private life” for the purpose of Article 8.

As to whether the interference with Mr Schneider’s rights had been justified, the Court first noted that the domestic courts’ decisions had been in accordance with the relevant provisions of the German Civil Code. They had further been aimed at pursuing the best interest of a married couple and of the children who were born during their marriage and were living with them.

However, the domestic courts had refused Mr Schneider access to and information about the boy presumed to be his son without examining whether, in the particular circumstances of the case, granting him access and providing him with information would be in the child’s best interest, or whether Mr Schneider’s interest had to be considered as overriding that of the legal parents. The Court referred to a similar case concerning the domestic courts’ refusal to grant a father access to his children living with their mother and her husband, without giving any consideration to the question whether contact between the applicant and his children would be in their best interest.² In that case, the Court had found that the German courts had failed to fairly balance the competing rights involved. While in Mr Schneider’s case it had not been established whether or not he was the biological father of the boy in question, that difference had been irrelevant for the domestic courts’ decision. They had assumed his paternity for the purpose of the proceedings and had rejected his request because he was not the boy’s legal father and had never had a social and family relationship with him.

In both cases, the reasons why the (presumed) biological father had not previously established a relationship with the child or children concerned had been irrelevant for the domestic courts’ findings. They had thus not given any weight to the fact that the respective applicants, for legal and practical reasons, had been unable to alter the relationship with the children concerned.

The Court underlined that it was for the domestic courts, having the benefit of direct contact with all those concerned, to determine whether or not contacts between a biological father and his child were in the latter’s best interest. However, the Court was not convinced that the best interest of children living with their legal father but having a different biological father could be truly determined by a general legal assumption. Having regard to the great variety of family situations possibly concerned, a fair balancing of the rights of all persons involved necessitated an examination of the particular circumstances of the case. In Mr Schneider’s case, the domestic courts had failed to conduct such an examination. There had accordingly been a violation of Article 8.

Article 8 in conjunction with Article 14

Having regard to its finding under Article 8, the Court did not consider it necessary to determine whether the domestic courts’ decisions had thereby discriminated against the applicant in breach of Article 8 read in conjunction with Article 14.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Germany was to pay Mr Schneider 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 10,000 in respect of costs and expenses.

The judgment is available only in English.

² *Anayo v. Germany* (application no. 20578/07) of 21 December 2010

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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.