



German courts' refusal to allow two presumed fathers to challenge other men's paternity was legitimate

In today's Chamber judgments in the cases [Ahrens v. Germany](#) (application no. 45071/09) and [Kautzor v. Germany](#) (application no. 23338/09), which are not final¹, the European Court of Human Rights held, unanimously, that there had been:

No violation of Article 8 (right to respect for private and family life) and no violation of Article 8 in conjunction with Article 14 (prohibition of discrimination) of the European Convention on Human Rights

The case concerned the German courts' refusal to allow two men to respectively challenge another man's paternity, in one case of the applicant's biological daughter, in the other case of the applicant's presumed biological daughter.

Principal facts

The applicant in the first case, Denis Ahrens, was born in 1970 and lives in Berlin. The applicant in the second case, Heiko Kautzor, was born in 1971 and lives in Willich (Germany). Both are German nationals.

Mr Ahrens assumed that he was the biological father of a girl born in August 2005, with whose mother, Ms P., he had had a relationship. At the time of conception, Ms P. lived with another man, Mr M., who acknowledged paternity of her child. The partners jointly exercise parental authority and bring up the child together. In October 2005, Mr Ahrens lodged an action to challenge Mr M.'s paternity, submitting a statutory declaration that he had had intimate relations with Ms P. during the period of conception. Mr M. submitted in reply that he assumed full parental responsibility for the child, even if he was not her biological father.

In a judgment of April 2007, the district court, having heard the parties and considered an expert report and the result of a blood test of the two men, established that Mr Ahrens was the child's biological father and found that he was not precluded from challenging Mr M.'s paternity. However, the court of appeal quashed the judgment in August 2007, holding that he did not have the right to challenge paternity, because of the social and family relationship between Mr M. and the child, which had continued even after it had been established that Mr M. was not the biological father. In May 2009, the Federal Constitutional Court declined to consider Mr Ahrens' constitutional complaint.

Mr Kautzor assumed that he was the biological father of his former wife's daughter, born in March 2005. His former wife, Ms D., lives with a new partner, Mr E., who acknowledged paternity of her daughter in May 2006. The couple subsequently had two more children together and got married. Mr Kautzor indicated to his former wife that he

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

wished to have access to the child and to acknowledge paternity. In July 2006, he lodged an action to have his paternity established, and subsequently requested the court to establish that Mr E. was not the child's father.

In a judgment of June 2008, the district court, having heard the parties including a curator appointed to represent the child's interest, rejected Mr Kautzor's request. It held that he was precluded from contesting paternity, because a social and family relationship existed between the child and her legal father, Mr E. Since the child already had a legal father, Mr Kautzor did not have the right to have his paternity established by a genetic test. The court of appeal upheld the judgment in December 2008. Following Mr Kautzor's complaint, the court of appeal further confirmed, in March 2009, that under the relevant provisions of the Civil Code, as interpreted by the Federal Constitutional Court, he did not have the right to have his biological paternity established without establishing legal paternity. In June 2009, the Federal Constitutional Court declined to consider his constitutional complaint.

Complaints, procedure and composition of the Court

Relying on Article 8 alone and in conjunction with Article 14, both applicants complained about the German courts' refusal to allow them to challenge another man's paternity and alleged that they had been discriminated against in comparison with the mother, the legal father and the child.

Mr Ahrens' application was lodged with the European Court of Human Rights on 18 August 2009 and Mr Kautzor's application was lodged on 30 April 2009. In Mr Ahrens' case, Ms P. and Mr M., the legal parents of his biological daughter, were allowed to intervene as a third party.

In both cases, judgment was given by a Chamber of seven, composed as follows:

Dean **Spielmann** (Luxembourg), *President*,
Elisabet **Fura** (Sweden),
Boštjan M. **Zupančič** (Slovenia),
Mark **Villiger** (Liechtenstein),
Ganna **Yudkivska** (Ukraine),
Angelika **Nußberger** (Germany),
André **Potocki** (France), *Judges*,

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

Article 8

In both cases, the Court found that the German courts' decision to reject the applicants' request to legally establish paternity of their respective biological child and presumed biological child interfered with their right to respect for their private life under Article 8. At the same time, the Court found that those decisions did not amount to an interference with their family life for the purpose of Article 8, as there had never been any close personal relationship between the applicants and the respective children.

In another case, *Anayo v. Germany*², the Court had found a violation of Article 8 on account of the German courts' refusal to grant a man access to his biological children on the ground that he had no social and family relationship with them. However, the

² *Anayo v. Germany* 20578/07 of 21 December 2010

proceedings brought by Mr Ahrens and Mr Kautzor had had a more far-reaching objective in that they sought to obtain full legal status as the respective child's father and thus to challenge the paternity of the existing legal father. Mr Kautzor further complained of having no possibility to have his alleged paternity certified without changing the child's legal status.

The Court noted that, according to its comparative research, a majority of Council of Europe Member States allowed a presumed biological father to challenge the legal paternity of another man established by acknowledgment, even where the legal father lived with the child in a social and family relationship. However, in a significant minority of nine Member States the presumed biological father did not have the standing to contest the paternity of the legal father. There was accordingly no settled consensus and the States therefore enjoyed a wide margin of appreciation as regards the rules on determination of a child's legal status.

While it was in the applicants' interest to establish an important aspect of their private lives and have it legally recognised, the German courts' decisions had aimed to comply with the legislature's will to give precedence to an existing family relationship between the respective child and her legal father, who provided parental care on a daily basis. It could be deduced from the judgment in *Anayo v. Germany* that, under Article 8, States had an obligation to examine whether it was in the child's best interests to allow the biological father to establish a relationship with his child, for example by granting contact rights. However, this did not necessarily imply a duty under the Convention to allow the biological father to challenge the legal father's status.

As regards Mr Kautzor's case, the Court observed that none of the 26 Member States it had examined provided a procedure to establish biological paternity without formally challenging the recognised father's paternity. The decision whether or not to allow for such a separate examination therefore also fell within the State's margin of appreciation.

The Court was furthermore satisfied that, in both cases, the German courts had examined the respective situation with due diligence. There had accordingly been no violation of Article 8 in both cases.

Article 8 in conjunction with Article 14

The Court noted that the main reason why the applicants had been treated differently from the mother, the legal father and the child with regard to the possibility of challenging paternity – and in Mr Kautzor's case with regard to genetic testing – was the aim of protecting the respective child and her social family from external disturbances. Having regard to its findings under Article 8, the Court considered that the decision to give the existing family relationship between the child and her legal parents precedence over the relationship with her biological father fell, insofar as the legal status was concerned, within the State's margin of appreciation. There had accordingly been no violation of Article 8 in conjunction with Article 14 in both cases.

The judgments are available only in English.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe to the [Court's RSS feeds](#).

Press contacts

echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Nina Salomon (tel: + 33 3 90 21 49 79)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)
Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)
Céline Menu-Lange (tel: + 33 3 90 21 58 77)
Denis Lambert (tel: + 33 3 90 21 41 09)

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.