



## A judicial declaration of paternity based, among other factors, on a refusal to undergo genetic testing was not contrary to the Convention

In its decision in the case of [Canonne v. France](#) (application no. 22037/13) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

In this case, the applicant, Mr Canonne, complained about the fact that the domestic courts had inferred his paternity from his refusal to submit to the genetic tests ordered by them.

The Court held that the domestic courts had not exceeded the room for manoeuvre (“wide margin of appreciation”) available to them when they took into account Mr Canonne’s refusal to submit to court-ordered genetic testing and declared him the father of Eléonore P., and in giving priority to the latter’s right to respect for private life over that of Mr Canonne.

### Principal facts

The applicant, Christian Canonne, is a French national who was born in 1941 and lives in Crans-Montana (Switzerland). He is the grandson of the founder of the Valda lozenges company and held the post of deputy chairman of the company which owns the Valda brand.

Christiane P., who was then in divorce proceedings and who at the relevant time held a management post in the Valda laboratories, gave birth on 16 July 1982 to a daughter, Eléonore. On 6 January 1988 Eléonore was recognised by Jan Willem H., whom Christiane P. married shortly afterwards. The couple divorced in 1997.

On 11 July 2002 Eléonore P. brought proceedings in the Paris *tribunal de grande instance* against Mr Canonne, seeking a judicial declaration of paternity. On 18 April 2003 she brought proceedings in respect of Jan Willem H., in order to have his declaration of paternity annulled. The two cases were joined.

On 21 September 2004 the *tribunal de grande instance* ordered tests in order to determine the likelihood that Jan Willem H. was the father. The results indicated, conclusively, that he was not the father.

On 3 January 2006 the *tribunal de grande instance* ordered tests in order to determine whether or not Mr Canonne might be the father. That judgment was upheld by the Paris Court of Appeal on 25 October 2007. As Mr Canonne had not responded to the summons to submit to tests, the expert reported that he was unable to carry out his instructions.

By a judgment of 20 October 2009, the court, drawing conclusions from Mr Canonne’s refusal to submit to the tests, held that Mr Canonne was the father of Eléonore P. and ordered that a marginal note be entered on the birth certificate to that effect.

Mr Canonne lodged an appeal before the Paris Court of Appeal. He alleged that, by inferring his paternity from his refusal to submit to tests, the court had breached the constitutional principle of the inviolability of the human body. The court of appeal upheld the judgment. Mr Canonne appealed on points of law. He submitted that certain items of evidence produced by Eléonore P. (in particular, hotel invoices referring to the Valda company) belonged to the former employee Christiane P., who could not, in his opinion, legitimately retain them after termination of her employment for personal use. Mr Canonne considered that the submission of this evidence had not complied with the principle of fairness. The Court of Cassation dismissed his appeal.

## Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 3 March 2013.

Relying on Article 6 § 1 (right to a fair hearing), Mr Canonne alleged that the preliminary admissibility procedure for appeals on points of law was incompatible with the right to a fair hearing. In particular, he criticised the absence of reasoning in the decisions issued. He also complained about the fact that the domestic courts had failed to declare inadmissible certain items of evidence submitted by the other party.

Relying on Article 8 (right to respect for private and family life), taken alone and in conjunction with Article 6 § 1, he complained about the fact that the domestic courts had inferred his paternity from his refusal to submit to the genetic tests ordered by them. He emphasised that under French law individuals who were the respondents in paternity actions were obliged to submit to a DNA test in order to establish that they were not the fathers. He alleged a breach of the principle of the inviolability of the human body which, in his view, prohibited any enforcement of genetic tests in civil cases.

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

Mark **Villiger** (Liechtenstein), *President*,  
Angelika **Nußberger** (Germany),  
Boštjan M. **Zupančič** (Slovenia),  
Vincent A. **de Gaetano** (Malta),  
André **Potocki** (France),  
Helena **Jäderblom** (Sweden),  
Aleš **Pejchal** (the Czech Republic), *Judges*,

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

## Decision of the Court

### Article 6 § 1

With regard to the preliminary admissibility procedure for appeals on points of law, the Court reiterated that it had previously concluded that this procedure was compatible with Article 6 § 1 of the Convention. It further noted that Mr Canonne had been given access to the report dismissing his appeal on points of law.

With regard to the admissibility of the evidence submitted by the other party, the Court reiterated that the Convention did not lay down rules on evidence as such. The Court did not exclude as a matter of principle that evidence obtained in breach of provisions of domestic law could be admitted. It was for the national courts to assess the evidence they had obtained, and its relevance. It fell to the Court to decide whether the proceedings considered as a whole, including the way in which the evidence was taken, had been fair as required by Article 6 § 1.

The Court noted that Mr Canonne had had an opportunity to put his argument concerning the lawfulness of the items in question to the first-instance and appeal courts. The parties had discussed it in adversarial proceedings and it had been dismissed at the close of proceedings which did not appear to have been questionable. In addition, the Court emphasised that the invoices in question had not been the only evidence taken into account by the lower courts. This part of the application was manifestly ill-founded and had to be rejected.

## Article 8

Having regard to the Civil Code, the Code of Civil Procedure and the Court of Cassation's case-law, the Court held that the interference with Mr Canonne's right to respect for his private life had been "in accordance with the law". The aim pursued was that of guaranteeing to Eléonore P. the full enjoyment of her right to respect for private life, which included the right to know one's parentage, as well as the right to legal recognition of the parent-child relationship. Such an aim corresponded to the "protection of the rights and freedoms of others" within the meaning of the second paragraph of Article 8.

The Court reiterated that the choice of the means calculated to secure compliance with Article 8 in the sphere of the relations of individuals between themselves was in principle a matter that fell within the States' margin of appreciation. That margin was wide when it came to weighing up the competing fundamental rights of two individuals.

The Court noted that the French courts' response in this case had been in tune with its own conclusions in the cases of [Mikulić v. Croatia](#) (no. 53176/99) and [Ebru and Tayfun Engin Çolak v. Turkey](#) (no. 60176/00). In those two cases, the finding of a violation of Article 8 of the Convention had been based on the domestic courts' inability to prevent the procedure for a declaration of paternity being hampered by the alleged father's refusal to undergo a DNA test.

Furthermore, in holding that Mr Canonne was the father of Eléonore P., the domestic courts had not relied solely on Mr Canonne's refusal to submit to the requested genetic testing. They had taken into account the written comments and statements of each party, as well as documents and witness statements. It was apparent from the judgment by the Paris Court of Appeal that his refusal, described as an "additional element" in support of finding that Mr Canonne was the father, had merely reinforced a conclusion that was already partly established in the light of these other elements.

By taking into account Mr Canonne's refusal to submit to the genetic testing and by giving priority to Eléonore P.'s right to respect for private life over that of Mr Canonne, the domestic courts had not exceeded the wide margin of appreciation available to them.

This part of the application was also manifestly ill-founded and had to be rejected.

The Court unanimously declared the application inadmissible.

*The decision is available only in French.*

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