EUROPEAN COURT OF HUMAN RIGHTS

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Press release issued by the Registrar

GRAND CHAMBER JUDGMENT IN THE CASE OF ODIÈVRE v. FRANCE

The European Court of Human Rights has delivered at a public hearing today a judgment[1] in the case of ***Odièvre v. France*** (application no. 42326/98). The European Court of Human Rights held:

● by ten votes to seven that there had been **no violation of Article 8** (right to respect for private and family life) of the European Convention on Human Rights;
● by ten votes to seven that there had been **no violation of Article 14** (prohibition of discrimination) of the Convention, taken together with Article 8.

1. Principal facts

The applicant, Pascale Odièvre, is a French national, who was born in 1965 and lives in Paris. She is unemployed.

Her application concerns the rules governing confidentiality on birth, which have prevented her from obtaining information about her natural family.

She was born on 23 March 1965 in Paris. Her mother requested that the birth be kept secret and completed a form at the Health and Social Security Department abandoning her rights to her child. The applicant was placed in the care of the Children's Welfare and Youth-Protection Service and registered as being in State care. She was subsequently fully adopted by Mr and Mrs Odièvre, whose surname she continues to use.

The applicant consulted her file at the Children's Welfare Service of the *département* of Seine in 1990 and was able to obtain non-identifying information about her natural family. On 27 January 1998 she applied to the Paris *tribunal de grande instance* for an order "for disclosure of confidential information concerning her birth and permission to obtain copies of any documents, public records or full birth certificates". She explained to the court that she had learnt that her natural parents had had a son in 1963 and two other sons after 1965. However, the Children's Welfare Service had refused to provide her with details regarding her brothers' identity on the ground that it would entail a breach of confidence. She submitted that having discovered the existence of her brothers, her application for disclosure of information about her birth was well-founded.

On 2 February 1998 the court registrar returned the case file to the applicant's lawyer stating "... it appears that the applicant should perhaps apply to the administrative court to obtain, if possible, an order requiring the authorities to disclose the information, although such an order would in any event contravene the Law of 8 January 1993". (The statute lays down that an application for disclosure of details identifying the natural mother is inadmissible if confidentiality was agreed at birth).

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[1] Grand Chamber judgments are final.

2. Procedure and composition of the Court

The application was lodged with the European Commission of Human Rights on 12 March 1998 and transmitted to the Court on 1 November 1998. Following a hearing on admissibility and the merits, it was declared admissible by a Chamber from the Third Section on 16 October 2001. On 24 June 2002 the Chamber relinquished jurisdiction in favour of the Grand Chamber, neither of the parties being opposed thereto. A hearing was held on 9 October 2002.

Judgment was given by a Grand Chamber of 17 judges, composed as follows:

Luzius **Wildhaber** (Swiss), ***President***
Christos **Rozakis** (Greek),
Jean-Paul **Costa** (French),
Georg **Ress** (German),
Nicolas **Bratza** (British),
Giovanni **Bonello** (Maltese),
Loukis **Loucaides** (Cypriot),
Pranas **Kūris** (Lithuanian),
Ireneu **Cabral Barreto** (Portuguese),
Françoise **Tulkens** (Belgian),
Karel **Jungwiert** (Czech),
Matti **Pellonpää** (Finnish),
Hanne Sophie **Greve** (Norwegian),
Snejana **Botoucharova** (Bulgarian),
Mindia **Ugrekhelidze** (Georgian),
Stanislav **Pavlovschi** (Moldovan),
Lech **Garlicki** (Polish), ***judges***

and also Paul **Mahoney**, ***Registrar***.

3. Summary of the judgment[1]

Complaint

The applicant complained that she had been unable to obtain details identifying her natural family, contrary to Article 8 (right to respect for private and family life) of the European Convention on Human Rights. She said that her inability to do so was highly damaging to her as it deprived her of the chance of reconstituting her life history. She further submitted that the French rules on confidentiality governing birth amounted to discrimination on the ground of birth, contrary to Article 14 (prohibition of discrimination).

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

Decision of the Court

Article 8 of the Convention

Applicability of Article 8
The Court considered it necessary to examine the case from the perspective of private life, not family life, since the applicant's claim to be entitled, in the name of biological truth, to know her personal history was based on her inability to gain access to information about her origin and to related identifying data.

The Court reiterated that Article 8 protected, among other interests, the right to personal development. Matters of relevance to personal development included details of a person's identity as a human being and the vital interest protected by the Convention in obtaining information necessary to discover the truth concerning important aspects of one's personal identity, such as the identity of one's parents. Birth, and in particular the circumstances in which a child was born, formed part of a child's, and subsequently the adult's, private life guaranteed by Article 8 of the Convention. That provision was therefore applicable in the instant case.

Compliance with Article 8
The applicant had complained that France had failed to ensure respect for her private life by its legal system, which totally precluded an action being brought to establish maternity if the natural mother had requested confidentiality and which, above all, prohibited access being given to information identifying her.

The Court observed that there were two competing interests in the case before it: on the one hand, the right to know one's origins and the child's vital interest in its personal development and, on the other, a woman's interest in remaining anonymous in order to protect her health by giving birth in appropriate medical conditions. Those interests were not easily reconciled, as they concerned two adults, each endowed with free will.

In addition, the problem of anonymous births could not be dealt with in isolation from the issue of the protection of third parties, essentially the adoptive parents, the father and the other members of the natural family. The Court noted in that connection that the applicant was now 38 years old, having been adopted at the age of four, and that non-consensual disclosure could entail substantial risks, not only for the mother herself, but also for the adoptive family which had brought up the applicant, and her natural father and siblings, each of whom also had a right to respect for his or her private and family life.

The general interest was also at stake, as French legislation aimed to protect the mother's and child's health at the birth and to avoid abortions, in particular illegal abortions, and children being abandoned other than under the proper procedure. The right to respect for life was thus one of the aims pursued by the French system.

The Court reiterated that the Contracting States had a margin of appreciation in the choice of measures for securing compliance with Article 8 in the sphere of relations between individuals. Most of the Contracting States did not have legislation comparable to that applicable in France, which prevented parental ties ever being established with the natural mother if she refused to disclose her identity. However, it noted that some countries did not impose a duty on natural parents to declare their identities on the birth of their children and that there had been cases of child abandonment in various other countries that had given rise to a debate about the right to give birth anonymously. In the light of the diversity of practice

to be found among the legal systems and traditions and of the fact that children were being abandoned, the Court considered that States had to be afforded a margin of appreciation to decide which measures were apt to ensure that the rights guaranteed by the Convention were secured.

The Court observed that the applicant had been given access to non-identifying information about her mother and natural family that had enabled her to trace some of her roots, while ensuring the protection of third-party interests. In addition, while preserving the principle that mothers were entitled to give birth anonymously, the law of 22 of January 2002 facilitated searches for information about a person's biological origins by setting up a National Council on Access to Information about Personal Origins. The legislation was already in force and the applicant could use it to request disclosure of her mother's identity, subject to the latter's consent being obtained.

The French legislation thus sought to strike a balance and to ensure sufficient proportion between the competing interests. Consequently, France had not overstepped the margin of appreciation which it had to be afforded in view of the complex and sensitive nature of the issue of access to information about one's origins, an issue that concerned the right to know one's personal history, the choice of the natural parents, the existing family ties and the adoptive parents. Consequently, there had been no violation of Article 8 of the Convention.

Article 14 of the Convention, taken together with Article 8

The Court observed that the applicant had complained that restrictions had been imposed on her ability to receive property from her natural mother. The Court noted that the applicant's complaint under Article 14 of the Convention concerned her inability to find out her origins, not a desire to establish a parental tie that would enable her to claim an inheritance. It considered that, though presented from a different perspective, that complaint was in practice the same as the complaint it had already examined under Article 8 of the Convention. In summary, the Court considered that the applicant had suffered no discrimination with regard to her filiation, as she had parental ties with her adoptive parents and a prospective interest in their property and estate and, furthermore, could not claim that her situation with regard to her natural mother was comparable to that of children who enjoyed established parental ties with their natural mother. Consequently, the Court held that there had been no violation of Article 14 of the Convention, taken together with Article 8.

Judges Rozakis, Ress, Kūris and Greve expressed concurring opinions. Judges Wildhaber, Bratza, Bonello, Loucaides, Cabral Barreto, Tulkens and Pellonpää expressed a joint dissenting opinion. These opinions are annexed to the judgment.

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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 in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.*