



Refusal to recognise a man's true biological father unjustified

In today's Chamber judgment in the case of [Pascaud v. France](#) (application no. 19535/08), which is not final,¹ 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 applicant's inability to secure judicial recognition of his true relationship with his biological father, who died in 2002 and was the owner of a wine-growing estate that was ultimately left to the municipality of Saint-Emilion.

Principal facts

The applicant, Christian Pascaud, is a French national who was born in 1960 and lives in Saint-Emilion (France).

Before the applicant's birth on 8 February 1960, his mother had been having a relationship with W.A., the son of a neighbouring vineyard owner. Shortly afterwards, she met another man, C.P., who recognised the applicant as his son in April 1961. During the same month, she married C.P. According to Mr Pascaud, C.P. never behaved like a father towards him. He added that he had been told at a very early stage, and that it was common knowledge, that his real father was W.A. His mother and her husband divorced in 1981. According to Mr Pascaud, for many years he would meet W.A. in the strictest secrecy and W.A. had promised him that he would regularise the situation on his mother's death. In 1993 W.A. suffered severe brain damage.

By a notarial deed of 27 August 1998 W.A. declared that he would be leaving his entire estate to the municipality of Saint-Emilion. By a notarial deed of 4 September 1998 he donated to the municipality a remainder interest in his wine-growing estate, Château Badette; in return, the municipality was to provide care for him. At the time, his holding was estimated at approximately 1.16 million euros (EUR) and comprised a dwelling, outbuildings and vineyards. The municipality accepted the donation.

On 24 October 2000 Mr Pascaud instituted proceedings in the Libourne *tribunal de grande instance* against his mother's former husband, C.P., seeking the annulment of the latter's acknowledgment of paternity, a judicial declaration recognising W.A. as his father and a corresponding entry on his birth certificate. Genetic tests were ordered. In July and August 2001 W.A. was summoned for testing at the medical laboratory on three occasions but failed to attend.

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

In September 2001 W.A. was placed under judicial protection. The guardianship judge, noting that W.A. had no known relatives, authorised the deputy mayor of Saint-Emilion to act on his behalf.

On 2 October 2001, at a meeting with the mayor of Saint-Christophe-des-Bardes, W.A. told him of his decision to recognise Mr Pascaud officially as his son. The mayor sought instructions from State Counsel's Office, and in the meantime refrained from formally registering the acknowledgment of paternity.

After W.A.'s written consent had been obtained, genetic tests were performed. They concluded that there was a 99.999% likelihood that W.A. was Mr Pascaud's father.

On 26 November 2001 the guardianship judge placed W.A. under partial guardianship with additional restrictions and appointed the *département* Union of Family Associations as his guardian.

On 6 December 2001 State Counsel informed the mayor of Saint-Christophe-des-Bardes that he was not entitled to draw up the deed of recognition, despite the biological father's paternity claim, as long as the initial acknowledgment of paternity had not been declared void.

On 7 March 2002 W.A. died.

The *tribunal de grande instance* ordered the striking out of the proceedings instituted by Mr Pascaud.

On 8 August 2002 Mr Pascaud again brought proceedings against his mother's former husband, C.P., and the municipality of Saint-Emilion, as W.A.'s successor in title, seeking the annulment of the 1961 acknowledgment of paternity, the validation of W.A.'s 2001 acknowledgment of paternity and a corresponding entry on his own birth certificate, and also challenging the will made by W.A. with the municipality as beneficiary.

On 24 June 2004 the Libourne *tribunal de grande instance* declared the 1961 acknowledgment of paternity null and void, having endorsed the expert report, and declared that C.P. was not the applicant's father. However, it rejected Mr Pascaud's request for judicial establishment of paternity, since the statutory time-limit for bringing such an action had expired. On 26 September 2006 the Bordeaux Court of Appeal dismissed all the applicant's claims. Having noted the evolution of W.A.'s mental condition and obtained an analysis of his signature by a handwriting expert, it held that he had not consented to the genetic tests, which should therefore be declared null and void. It further observed that Mr Pascaud had not been formally recognised by W.A., who had simply expressed the intention to recognise him. In a decision of 17 October 2007 the Court of Cassation declared inadmissible an appeal on points of law by Mr Pascaud.

In early 2008 the municipality of Saint-Emilion informed Mr Pascaud that in connection with the sale of Château Badette, he might be awarded compensation in exchange for an undertaking to discontinue all proceedings and actions against the municipality. It also notified him that he would be given various personal effects belonging to W.A. The municipality auctioned the estate.

Complaints, procedure and composition of the Court

Relying in particular on Article 8 of the Convention, Mr Pascaud complained that he had been unable to secure judicial recognition of his true relationship towards his biological father.

The application was lodged with the European Court of Human Rights on 15 April 2008.

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

Dean **Spielmann** (Luxembourg), *President*,
Elisabet **Fura** (Sweden),
Jean-Paul **Costa** (France),
Karel **Jungwiert** (the Czech Republic),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro-Lefèvre** (Monaco),
Ann **Power** (Ireland), *Judges*,

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

Decision of the Court

Article 8

Although genetic tests had proved that there was a 99.999% likelihood that W.A. was his father, Mr Pascaud had been unable either to challenge C.P.'s status as his father or to establish his biological relationship with W.A. This had undoubtedly constituted interference with his right to respect for his private life. To determine whether the interference had been in accordance with Article 8, the Court had to examine whether a fair balance had been struck between, on the one hand, Mr Pascaud's right to know his parentage and, on the other hand, the right of others not to undergo DNA tests and the general interest in protecting legal certainty.

The Court observed that in refusing to recognise Mr Pascaud's true biological father, the Court of Appeal had had regard to W.A.'s personal rights and interests, in particular his lack of express consent to genetic testing. However, at no time had it taken into consideration Mr Pascaud's right to know his parentage and to have his father's true identity established, a right which did not recede with age – quite the reverse. The protection of the putative father's interests could not suffice in itself as a ground for depriving Mr Pascaud of his rights under Article 8.

The Court further noted that the judicial protection under which W.A. had been placed had not deprived him of the right to consent to giving a DNA sample, and, precisely, that W.A. had informed the authorities of his intention to recognise Mr Pascaud. Moreover, neither the conduct nor the reliability of the genetic tests which had concluded that there was a 99.999% likelihood that W.A. was Mr Pascaud's father had ever been challenged in the domestic courts.

Lastly, the Court observed that after declaring the genetic tests null and void, the Court of Appeal had held that the identity of Mr Pascaud's biological father could not be established. Domestic law, moreover, did not afford him the possibility of requesting further DNA tests on the putative father's remains (since in the Court of Appeal's view the deceased had not expressly given his consent while alive, it would have been necessary to obtain his family's consent, but he had no known relatives).

In those circumstances, a fair balance had not been struck between the competing interests, and Mr Pascaud had suffered a violation of Article 8.

Article 41

Mr Pascaud sought more than EUR 2,000,000 by way of just satisfaction in respect of pecuniary damage (amounting to half the assets of W.A.'s estate, to which he would have been entitled had he been recognised as his son). The Court held that this question

was not ready for decision and reserved it. It will be determined at a later date in the light of further observations by the parties. However, the Court awarded Mr Pascaud EUR 10,000 in respect of non-pecuniary damage and EUR 10,000 for costs and expenses.

The judgment is available only in French.

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Press contacts

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

Frédéric Dolt (tel: + 33 3 90 21 53 39)

Emma Hellyer (tel: + 33 3 90 21 42 15)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)

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

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.