



## Man ordered to take DNA test in disputed paternity case did not suffer violation of right to privacy

In today's **Chamber** judgment<sup>1</sup> in the case of **Mifsud v. Malta** (application no. 62257/15) 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)** of the European Convention on Human Rights.

The case concerned Mr Mifsud's complaint about being ordered by a court to undergo a DNA test in a contested paternity case.

The Court found that the domestic courts had fairly balanced Mr Mifsud's rights and those of a woman, X, who was trying to establish that he was her father. In particular, the courts had examined Mr Mifsud's objections to taking the test in a first-instance civil court and at two levels of constitutional jurisdiction, eventually finding against him and ordering the procedure to take place.

### Principal facts

The applicant, Francesco Saverio Mifsud, is a British national who was born in 1925 and lived in Dublin (Ireland). He passed away in December 2017 and the application has been pursued by his widow.

In December 2012 a woman, X, began court proceedings to have Mr Mifsud declared her biological father and for this to be put on her birth certificate.

The applicant denied paternity and X asked the court to order him to take a DNA test, as provided for by the Civil Code in such cases. Mr Mifsud objected, arguing that forcing him to take the test would breach his rights under Article 8 of the European Convention and asking for the question to be referred to the constitutional jurisdictions.

Both the Civil Court (First Hall) in its constitutional competence and the Constitutional Court dismissed Mr Mifsud's claim.

The Constitutional Court referred in particular to X's right to know who her father was and found that Mr Mifsud would not suffer any humiliation in having to take the test, which was by way of a mouth swab. The DNA procedure was eventually carried out.

### Complaints, procedure and composition of the Court

The applicant complained that Maltese law made a genetic test mandatory in paternity proceedings and that it was imposed on him against his will, in breach of Article 8 (right to respect for privacy of the home and family life).

The application was lodged with the European Court of Human Rights on 15 December 2015.

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](http://www.coe.int/t/dghl/monitoring/execution).

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

Branko **Lubarda** (Serbia), *President*,  
 Vincent A. **De Gaetano** (Malta),  
 Helen **Keller** (Switzerland),  
 Dmitry **Dedov** (Russia),  
 Georgios A. **Serghides** (Cyprus),  
 Jolien **Schukking** (the Netherlands),  
 María **Elósegui** (Spain),

and also Fatoş **Aracı**, *Deputy Section Registrar*.

## Decision of the Court

The Court focussed on whether the domestic courts had achieved the required balance between Mr Mifsud's wish to refuse to provide the DNA sample, a procedure which was an interference with his rights to respect for his private life, and those of X to uncover the truth about an important aspect of her identity. The Court emphasised that in such cases it examined the specific effects of domestic legislation on an applicant, rather than the law itself in the abstract.

Mr Mifsud had argued that the domestic legislation failed to respect the principle of equality of arms owing to the timing of the order to provide the DNA sample – it came at the beginning of paternity proceedings before either side had presented a case for or against the need for such a test. The test determined the issue and meant in effect providing self-incriminating evidence.

The Court did not agree that Mr Mifsud had been ordered to undergo the test before being able to submit evidence. Both he and X had made submissions to the civil court, which had then delayed a decision until his objections had been settled at two levels of constitutional jurisdiction. Even after the civil court issued the order, he had been able to try to challenge the outcome of the test.

The Court rejected Mr Mifsud's arguments about self-incrimination, even if such tests were conclusive in paternity disputes. What was important was that he had been able to participate in the proceedings, presenting arguments and examining witnesses. Such tests did not contradict the rule of law and natural justice, particularly given the legitimate aim in this case of the State fulfilling its duty to X under Article 8.

Partly accepting Mr Mifsud's argument that the test was in theory mandatory, which, as the Constitutional Court had found, could raise an issue under Article 8, the Court nevertheless found that in practice that was unlikely to be the case, for example, if there was no prima facie case for it. In addition, in the case of Mr Mifsud, the issue had been determined after a thorough examination by the domestic courts, which had not shown any signs of being arbitrary or unfair.

Overall, the domestic courts had struck a fair balance when weighing up Mr Mifsud's interests and those of X and there had been no violation of Article 8.

*The judgment is available only in English.*

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