

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF RÖMAN v. FINLAND

(Application no. 13072/05)

JUDGMENT

STRASBOURG

29 January 2013

FINAL

29/04/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of Röman v. Finland,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Ineta Ziemele, *President,*
David Thór Björgvinsson,
Päivi Hirvelä,
George Nicolaou,
Zdravka Kalaydjieva,
Vincent A. De Gaetano,
Krzysztof Wojtyczek, *judges,*

and Lawrence Early, *Section Registrar,*

Having deliberated in private on 11 December 2012,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 13072/05) against the Republic of Finland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Finnish national, Ms Mirja Anneli Röman ("the applicant"), on 6 April 2005.

2. The applicant was represented by Ms Marja Toivio-Kaasinen, a lawyer practising in Helsinki. The Finnish Government ("the Government") were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

3. The applicant alleged, in particular, under Articles 8 and 14 that she had been unable to have her biological father's paternity legally established due to the five-year time-limit set in national legislation for children born before the entry into force of the Paternity Act in 1976.

4. On 28 April 2008 the President of the Fourth Section decided to communicate the complaint concerning the impossibility to establish paternity and the discrimination complaint to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1954 and lives in Vantaa.

6. The applicant was born out of wedlock and bore her mother's maiden name. Her mother and her biological father concluded a child support agreement the same year. The agreement was verified by the social services.

7. In 1956 the mother married another man and in 1961 the applicant's name was changed to that of her mother's husband. The spouses agreed that the applicant's biological father was never to be mentioned. The applicant had two siblings from that marriage.

8. On 1 October 1976 the Paternity Act (*isyyslaki, lagen om faderskap*) came into force. The transitional provisions in the Implementing Act of the Paternity Act (*laki isyyslain toimeenpanosta, lagen angående införande av lagen om faderskap*) state that paternity proceedings with regard to a child born before the entry into force of the law had to be initiated within five years, that is, before 1 October 1981. Moreover, no claim could be examined after the death of the father. No such restrictions exist for children born after the entry into force of the Paternity Act.

9. At some point the applicant started wondering about her biological background. In 2001 she discovered that in the church registry, which until 1993 was the only official population registry, her mother's husband was listed as her stepfather. The State population registry, with which the church records were merged in 1993, stated that the mother's husband was her father. She also located a copy of the child support agreement in the archives of the social services which made it possible for her to locate her biological father.

10. On 25 September 2002 the information in the State population register was corrected.

11. On 6 February 2003 the applicant initiated paternity proceedings against her biological father in the Vantaa District Court (*käräjäoikeus, tingsrätten*). She claimed that she had only learned in December 2001 that the mother's husband, who had been registered as her father, was not her biological father.

12. On 18 June 2003 the District Court dismissed the applicant's claim. It found that during the five-year time-limit, the applicant had been an adult and could have initiated paternity proceedings. She could also have questioned her mother or could have verified the information on the church register, which had been correct all the time. The application of the five-year time-limit was not in contradiction to the Constitution or the Convention. Her claim was thus time-barred.

13. On 17 July 2003 the applicant appealed to the Helsinki Court of Appeal (*hovioikeus, hovrätten*), claiming that she had not known that her mother's husband was not her biological father. Her mother had testified in the District Court that she had never told her daughter about her origins and that this issue was never discussed in the family. During the five-year period the applicant would not have had any interest in initiating proceedings as she was not yet aware of her legal status.

14. On 15 March 2004 the Court of Appeal upheld the District Court's decision on the same grounds as the latter.

15. On 13 May 2004 the applicant appealed to the Supreme Court (*korkein oikeus, högsta domstolen*), reiterating the grounds of appeal already presented before the Court of Appeal.

16. On 12 October 2004 the Supreme Court refused the applicant leave to appeal.

17. In January 2005 the applicant filed a petition with the Parliamentary Ombudsman *(eduskunnan oikeusasiamies, riksdagens justitieombudsman).* On 16 February 2005 the Deputy Parliamentary Ombudsman considered that the national courts had acted within their margin of appreciation, and that he could not examine a case unless the margin of appreciation had been exceeded or misused.

18. In 2007 the applicant had a DNA test performed privately on her biological father, which proved with 99.99% certainty that he was her biological father.

19. On 3 July 2008 the applicant's biological father died.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitutional provisions

20. The Constitution of Finland (*perustuslaki, grundlagen,* Act no. 731/1999), Article 6, paragraphs 1 and 2, guarantees to everyone equality before the law and forbids discrimination of any kind:

> "Everyone is equal before the law.
>
> No one shall, without an acceptable reason, be treated differently from other persons on grounds of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person. ..."

21. Article 10 of the Constitution guarantees the right to privacy:

> "Everyone's private life, honour and the sanctity of the home are guaranteed. More detailed provisions on the protection of personal data are laid down by an Act."

22. Article 21, paragraph 1, of the Constitution guarantees to everyone the right to have one's case dealt with by a court of law:

> "Everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority ..."

23. Article 106 of the Constitution gives a court of law the right to give primacy to the Constitution when the application of an Act would conflict with the Constitution:

> "If, in a matter being tried by a court of law, the application of an Act would be in evident conflict with the Constitution, the court shall give primacy to the provision in the Constitution."

24. According to Chapter 12, section 1, subsection 2, of the Code of Judicial Procedure (*oikeudenkäymiskaari, rättegångsbalken*; Act no. 444/1999):

> "A minor who has attained fifteen years of age shall have an independent right of action and right to be heard in a matter concerning his or her person, parallel to that of the person responsible for his or her care and custody or his or her other legal representative."

B. Provisions and practice regulating paternity

25. According to section 20 of the Act on Children Born out of Wedlock (*laki avioliiton ulkopuolella syntyneistä lapsista*, *lagen om barn utom äktenskap,* Act no. 173/1922), a child born out of wedlock had a father, if a man acknowledged paternity, but paternity could not be established against a man's will. According to section 24 of the same Act, such defendant was deemed to be the person liable to provide child support to the child if he had had sexual intercourse with the child's mother at the time when the child was possibly conceived. However, such an action was to be dismissed if it was manifestly improbable that the child was conceived as a result of that sexual intercourse.

26. As children born out of wedlock were put in a substantially worse position than children born in wedlock, there was a need to guarantee equal treatment of all children before the law (see government proposal HE 90/1974). This became the main aim of the new Paternity Act of 1975 (*isyyslaki, lagen om faderskap*, Act no. 700/1975) which repealed the Act of 1922.

27. Section 3 of the Paternity Act provides that paternity is established either by acknowledgement or by a court decision. According to section 22, subsection 1, the child has a right to institute proceedings with a view to having paternity established.

28. Section 4 of the Implementing Act of the Paternity Act (*laki isyyslain toimeenpanosta, lagen angående införande av lagen om faderskap*, Act no. 701/1975) provides that the provisions of the Paternity Act shall also apply if the child was born before the entry into force of the Act, unless otherwise provided. Section 5 provides that if a man, pursuant to the Act on Children Born out of Wedlock, enacted before the entry into force of the Paternity Act, has committed or been obliged by a final judgment to pay child support to a child born out of wedlock who has not the status of an acknowledged child, the provisions in sections 6 and 7 of this Act shall apply to the investigation of paternity, actions for the establishment of paternity and the exercise of the child's right to be heard.

29. Sections 6 and 7 of the Implementing Act of the Paternity Act provide as follows:

> "The child welfare supervisor shall attend to the investigation of paternity as provided in the Paternity Act, if a child born before the entry into force of this Act has

not reached fifteen years of age and the mother or the legal guardian of the child has expressed a wish that the child welfare supervisor attend to the investigation of paternity. After a man has acknowledged his paternity, the provisions in section 5, subsection 2; section 20, subsection 1; and section 21 of the Paternity Act shall apply to the obligation of the child welfare supervisor to attend to the investigation of paternity, and to the enforcement of acknowledgement."

"A child or his or her legal guardian shall have the right of action for the establishment of paternity as provided in the Paternity Act. The child welfare supervisor shall not be entitled to exercise the child's right to be heard without a separate authorisation. Proceedings for the establishment of paternity must be initiated within five years from the entry into force of the Paternity Act. However, no proceedings may be instituted if the man is deceased."

30. It appears from the drafting history of the Paternity Act (see Report of the Legal Affairs Committee LaVM 5/1975 vp, p. 10) that considerations of legal certainty underlie the decision to restrict the right of action. The entry into force of the Act opened up an opportunity to initiate proceedings that did not exist at the time when the children in question were conceived. The legislator considered that putative fathers' legal security required rapid elimination of uncertainty about possible claims being brought against them on the basis of the Paternity Act. The restriction stating that a man's death prevented the initiation of proceedings was justified by the argument that, in such cases, it was usually no longer possible to obtain sufficient evidence of the man's paternity.

31. The Supreme Court has held on several occasions that the five-year time-limit in question is to be strictly applied. An exception has been made in a case where the paternity of the mother's husband had to be annulled first and, as a result of that, the child would have become fatherless if the time-limit had been strictly respected (see *KKO 1993:58*).

32. In its precedent case *KKO 1982-II-165* the Supreme Court considered that the five-year time-limit in section 7, subsection 2, of the Implementing Act of the Paternity Act was not such a time-limit that could be restored by seeking extraordinary remedies (*menetetyn määräajan palauttaminen, återställandet av försutten fatalietid*).

33. In its most recent precedent case *KKO 2012:11* the Supreme Court found, in *plenum* composition, the following:

"27. As described above in points 11 and 12, according to the interpretation of the European Court of Human Rights an application of restrictions of right to institute paternity proceedings may lead to a violation of the right to respect for private life protected by Article 8 if such restrictions in practice prevent the fact of clarifying of a person's biological father and the confirmation of the paternity. This may have been the case in situations in which a person has not had a real opportunity, due to reasons beyond his or her control, to clarify the identity of his or her biological father and to have the paternity confirmed by a court within the time-limit.

28. According to the case-law of the European Court of Human Rights the assessment whether reasons favouring the granting of the right of appeal weigh heavier than the reasons speaking against it, must be made *in casu* and with an intent

to reach a fair balance between the competing interests. The case-law does not give a direct guidance on what issues the assessment needs to be based from the point of view of the putative father's and his family's interests and general legal certainty. The scope of the domestic margin of appreciation, as it appears from the current case-law of the Court, remains in practice narrow. The Supreme Court considers that the *in casu* assessment applied by the European Court of Human Rights means that the aims of legal security and the protection of the prevailing circumstances, which normally relate to the restricting of the time allowed to institute an action, remain to a large extent unattained.

29. A paternity can currently be clarified with the help of DNA tests with considerable certainty and without significance being given to the passage of time in gathering evidence on the paternity. This ground, which led to the imposition of the time-limit in section 7, subsection 2, of the Implementing Act [of the Paternity Act], has thus lost its significance. Knowing one's biological origin and its judicial confirmation and pronouncement are, according to the current knowledge, important parts of a person's identity and therefore fall to the core areas of protection of private life, guaranteed by Article 10 of the Constitution and Article 8 of the Convention. The passage of time does not mean either that a child's need to know his or her both parents and to have the paternity confirmed would disappear but it may even grow. Legal security and the long prevailed legal state of affairs, which has not been the result of a child's conscious and free choice, are not as such sufficient grounds to support that a child should not be able to institute paternity proceedings after the time-limit has expired. In such situation the non-confirmation of the paternity requires that in that particular case there are very strong factual counter reasons relating to the putative father's or to other persons' rights.

30. On the above grounds the Supreme Court considers that a principle emerges from the case-law of the European Court of Human Rights that a child has, except in special circumstances, a right to know who his or her biological father is and to have a case concerning confirmation of a such legal status examined by a court, at least once. Such principle cannot currently be regarded as unclear or subject to interpretation. At the same time these rights concerning a person's origin and identity clearly fall within the scope of protection of private life guaranteed by Article 10 of the Constitution.

31. The Supreme Court considers that the application of the time-limit in section 7, subsection 2, of the Implementing Act in cases in which legal or factual reasons have prevented the institution of paternity proceedings in due time, can therefore lead to an evident conflict with the Constitution. In such situation a court must, in accordance with Article 106 of the Constitution, give primacy to the constitutional provision.

32. In Finland a legal relationship to a father can be confirmed only, according to the Paternity Act, by acknowledgement or by a court decision. Any legal effects which are based on other legislation cannot be restricted in the context of the confirmation of the paternity but they are to be decided, if need be, separately. Nor is imposing restrictions justified in the present case as the expressly mentioned main aim of the Paternity Act is the realisation of the legal equality of children. One has to take into account also the principles of Article 6 of the Constitution, according to which everyone is equal before the law and no one shall, without an acceptable reason, be treated differently from other persons on grounds of origin or other reason that concerns his or her person."

In the case at hand the provision concerning the five-year time-limit was therefore left inapplicable on the strength of Article 106 of the Constitution and paternity was confirmed.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

34. The applicant complained that her right to respect for family life had been violated when national legislation had deprived her of her biological father. Article 8 of the Convention reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

35. The Government contested that argument.

A. Admissibility

36. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

37. The applicant agreed that she had been an adult when the Paternity Act had entered into force but pointed out that she had learned about her origins only in 2001. She had lived with her mother and the latter's husband all her life, she bore her stepfather's name and nobody, not even her mother, had told her the truth. She had had no reason to suspect, during the statutory five-year period, what her origins were. Nor had she had any idea of the identity of her biological father. Had she known the truth at the time, she would have started the proceedings against her biological father within the five-year time-limit. The application of the five-year time-limit was too

strict and absolute. The interference with the applicant's rights had thus not been necessary in a democratic society.

38. The Government accepted that the impossibility for the applicant to have her father's paternity established after the expiry of the five-year time-limit had constituted an interference with her private life under Article 8 of the Convention. The impugned measures had had a basis in Finnish legislation, namely in section 7, subsection 2, of the Implementing Act of the Paternity Act.

39. As to whether the interference had been "necessary in a democratic society", the Government pointed out that the applicant had been an adult, 22 years old, when the Paternity Act entered into force in 1976. The Act was retroactive in order to guarantee equality in law between children, irrespective of their descent. The time-limit of five years only concerned cases where paternity was to be established by a court decision while it was still possible for a father to acknowledge such a child. The aim of the time-limit had been to ensure a rapid examination of possible claims made against putative fathers in order to protect their rights and freedoms, and to ensure legal certainty and finality in family relations. The restriction concerning a man's death was justified, as in such cases it was usually no longer possible to obtain sufficient evidence of paternity.

40. The Government pointed out that, in the present case, the applicant had been an adult when the Paternity Act came into force and she would have been able to initiate proceedings during the five-year time-limit. The applicant alleged that the reason for not having instituted paternity proceedings during that time-limit but only twenty-two years later, in February 2003, was that she had only learned on 13 December 2001 that she was not the daughter of her mother's husband. Even though the applicant had received child support from her putative father, it did not mean that the latter's paternity had been established. The applicant had known, or at least had had grounds for assuming, who her father was. She had suspected already as a teenager, that is, before the entry into force of the Paternity Act, that her mother's husband was not her biological father. She could have checked that in the church register, where the information had been correct, and initiated proceedings. The reform of family legislation, including the paternity laws, had been one of the main legal reforms of the 1970s and it had been widely publicised. The applicant, being an adult during the five-year period, must have been aware of the law reform and the new possibility to have her alleged father's paternity established by a court decision. The five-year time limit was thus proportionate to the legitimate aim pursued, namely the general interest in protecting legal certainty of family relationships.

2. *The Court's assessment*

a. Applicability of Article 8 of the Convention

41. The Court notes that it is not disputed between the parties that Article 8 is applicable.

42. In this connection the Court notes that the applicant, born out of lawful wedlock, sought by means of judicial proceedings to determine her legal relationship with the person she claimed was her father, through the confirmation of the biological truth.

43. The Court has held on numerous occasions that paternity proceedings fall within the scope of Article 8 (see *Mikulić v. Croatia*, no. 53176/99, § 51, ECHR 2002-I; and *Jäggi v. Switzerland*, no. 58757/00, § 25, ECHR 2006-X). In the instant case the Court is not called upon to determine whether the proceedings to establish parental ties between the applicant and her biological father concern "family life" within the meaning of Article 8, since in any event the right to know one's ascendants falls within the scope of the concept of "private life", which encompasses important aspects of one's personal identity, such as the identity of one's parents (see *Odièvre v. France* [GC], no. 42326/98, § 29, ECHR 2003-III, and *Mikulić v. Croatia*, cited above, § 53). There appears, furthermore, to be no reason of principle why the notion of "private life" should be taken to exclude the determination of a legal or biological relationship between a child born out of wedlock and his natural father (see, *mutatis mutandis, Mikulić*, *ibid*.; and *Jäggi v. Switzerland*, cited above, § 25).

44. Accordingly, the facts of the case fall within the ambit of Article 8 of the Convention.

b. Whether the case involves a positive obligation or an interference

45. The Court reiterates that the essential object of Article 8 is to protect the individual against arbitrary action by public authorities. There may in addition be positive obligations inherent in ensuring effective "respect" for private or family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves (see *Kroon and Others v. the Netherlands*, 27 October 1994, § 31, Series A no. 297-C; and *Mikulić v. Croatia*, cited above, § 57). However, the boundaries between the State's positive and negative obligations under this provision do not lend themselves to precise definition. The applicable principles are nonetheless similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation (see *Keegan v. Ireland*, 26 May 1994, § 49, Series A no. 290; and *Kroon and Others v. the Netherlands*, cited above).

46. The Court reiterates that its task is not to substitute itself for the competent domestic authorities in regulating paternity disputes at the national level, but rather to review under the Convention the decisions that those authorities have taken in the exercise of their power of appreciation (see, *inter alia*, *Różański v. Poland*, no. 55339/00, § 62, 18 May 2006; *Mikulić v. Croatia*, cited above, § 59; and *Hokkanen v. Finland*, 23 September 1994, § 55, Series A no. 299-A). The Court will therefore examine whether the respondent State, in handling the applicant's action for judicial recognition of paternity, has complied with its positive obligations under Article 8 of the Convention.

c. Whether the impossibility to bring an action was "in accordance with the law" and pursued a legitimate aim

47. At the outset, the Court observes that the applicant did not dispute that the impossibility of bringing an action for judicial recognition of paternity was "in accordance with the law". Indeed, she complained that the time-limit imposed by the Paternity Act prevented her from having the possibility of obtaining judicial recognition of paternity before the domestic courts, in violation of Article 8 of the Convention.

48. In this connection it can be observed that the Paternity Act introduced the right of a child or his or her legal guardian to institute proceedings for judicial recognition of paternity in the domestic legal system in 1976. According to the Implementing Act of the Paternity Act and concerning children born before the entry into force of the Paternity Act, this right was subject to a five-year time-limit which started to run from the entry into force of the Act in 1976. Thus, in the instant case the applicant had until 1 October 1981 to institute paternity proceedings. The applicant, however, instituted such proceedings only in February 2003 as she claimed that she had not known that her mother's husband was not her biological father until in December 2001 when she found out about the child support agreement signed by her biological father and the entry in the church register. Her application was then found to be time-barred.

49. The impossibility of bringing an action for judicial recognition of paternity pursued a legitimate aim. The time-limit imposed by the Implementing Act of the Paternity Act for actions concerning recognition of paternity was intended to protect the interests of putative fathers from stale claims and prevent possible injustice if courts were required to make findings of fact that went back many years (see, *inter alia, Mizzi v. Malta,* no. 26111/02, § 83, ECHR 2006-I (extracts); *Shofman v. Russia*, no. 74826/01, § 39, 24 November 2005; and, *mutatis mutandis*, *Stubbings and Others v. the United Kingdom*, 22 October 1996, § 51, *Reports of Judgments and Decisions* 1996-IV).

d. Whether a fair balance was struck

50. The Court points out that it has previously accepted that the introduction of a time-limit for the institution of paternity proceedings was justified by the desire to ensure legal certainty and finality in family relations (see, for example, *Mizzi v. Malta*, cited above, § 88; and *Rasmussen v. Denmark*, 28 November 1984, § 41, Series A no. 87). Accordingly, the existence of a limitation period *per se* is not incompatible with the Convention. What the Court needs to ascertain in a given case is whether the nature of the time-limit in question and/or the manner in which it is applied is compatible with the Convention.

51. When deciding whether or not there has been compliance with Article 8 of the Convention, the Court must determine whether, on the facts of the case, a fair balance was struck by the State between the competing rights and interests at stake. Apart from weighing the interests of the individual *vis-à-vis* the general interest of the community as a whole, a balancing exercise is also required with regard to competing private interests. In this connection, it should be observed that the expression "everyone" in Article 8 of the Convention applies to both the child and the putative father. On the one hand, people have a right to know their origins, that right being derived from a wide interpretation of the scope of the notion of private life (see *Odièvre v. France* [GC], cited above, § 42). A person has a vital interest, protected by the Convention, in receiving the information necessary to uncover the truth about an important aspect of his or her personal identity and eliminate any uncertainty in this respect (see *Mikulić v. Croatia*, cited above, §§ 64 and 65). On the other hand, a putative father's interest in being protected from claims concerning facts that go back many years cannot be denied. Finally, in addition to that conflict of interest, other interests may come into play, such as those of third parties, essentially the putative father's family, and the general interest of legal certainty.

52. While performing the "balancing of interests test" in the examination of cases concerning limitations on the institution of paternity claims, the Court has taken a number of factors into consideration. For instance, the particular point in time when an applicant becomes aware of the biological reality is pertinent. The Court will therefore examine whether the circumstances substantiating a particular paternity claim are met before or after the expiry of the applicable time-limit (see, for instance, the cases of *Shofman v. Russia*, cited above, §§ 40 and 43; and *Mizzi v. Malta*, cited above, §§ 109-111, concerning disavowal of paternity claims). Furthermore, the Court will examine whether or not an alternative means of redress exists in the event that the proceedings in question are time-barred. This would include, for example, the availability of effective domestic remedies to obtain the re-opening of the time-limit (see, for example, *Mizzi v. Malta,* cited above, § 111) or exceptions to the application of a time-limit in situations where a person becomes aware of the biological reality after the time-limit has expired (see *Shofman v. Russia*, cited above, § 43).

53. The yardstick against which the above factors are measured is whether a legal presumption has been allowed to prevail over biological and social reality and if so whether, in the circumstances, this is compatible, having regard to the margin of appreciation left to the State, with the obligation to secure effective "respect" for private and family life, taking into account the established facts and the wishes of those concerned (see *Kroon and Others v. the Netherlands*, cited above, § 40). For example, the Court has found that rigid limitation periods or other obstacles to actions contesting paternity that apply irrespective of a putative father's awareness of the circumstances casting doubt on his paternity, without allowing for any exceptions, violated Article 8 of the Convention (see, *Shofman v. Russia*, cited above, §§ 43-45; see also, *mutatis mutandis*, *Mizzi v. Malta,* cited above, §§ 80 and 111-113; *Paulík v. Slovakia*, no. 10699/05, §§ 45-47, ECHR 2006-XI (extracts); and *Tavlı v. Turkey*, no. 11449/02, §§ 34-38, 9 November 2006).

54. In connection with the above, the Court further reiterates that the choice of the means calculated to secure compliance with Article 8 in the sphere of the relations of individuals between themselves is, in principle, a matter that falls within the Contracting States' margin of appreciation. In this connection, there are different ways of ensuring "respect for private life", and the nature of the State's obligation will depend on the particular aspect of private life that is at issue (see *Odièvre v. France* [GC], cited above, § 46; and *X and Y v. the Netherlands*, 26 March 1985, § 24, Series A no. 91).

55. Turning to the present case, the Court notes that the applicant was 22 years old when the Paternity Act came into force and 27 years old when the time-limit expired. However, the identity of the applicant's biological father become known to her only in December 2001 when she found out about the child support agreement signed by her biological father and the entry in the church register. On 6 February 2003, at the age of 48, the applicant initiated paternity proceedings against her biological father in the District Court. After the court proceedings, in 2007, the paternity of the applicant's biological father was confirmed by a DNA test. On 3 July 2008 the applicant's biological father died.

56. The Court notes that, when the paternity proceedings were initiated in 2003, the five-year time-limit provided by the national legislation was strictly applied. The national legislation did not provide any alternative means of redress as the time-limit could not as such be restored by seeking extraordinary remedies. Nor had the Supreme Court, at the time, agreed to any exceptions to the application of the time-limit in question, except in one exceptional case.

57. The Court notes that it has already had occasion to observe that a significant number of States do not set a limitation period for children to bring an action aimed at having paternity established and that there is a tendency towards a greater protection of the right of the child to have his

paternal affiliation established (see *Phinikaridou v. Cyprus,* no. 23890/02, ECHR 2007-XIV (extracts)). The Court has also on several occasions found that it has difficulties in accepting inflexible limitation periods which do not provide any exceptions to the application of that period (see, *mutatis mutandis*, *Shofman v. Russia*, cited above, § 43; *Grönmark v. Finland*, no. 17038/04, § 55, 6 July 2010; and *Backlund v. Finland*, no. 36498/05, § 53, 6 July 2010). The main problem therefore is the absolute nature of the time-limit rather than its *dies a quo* as such. As a result of this rigid time-limit, as upheld by the Supreme Court, the applicant was deprived of the possibility of obtaining a judicial determination of the paternity of her biological father. She was deprived of this right even though she was in a situation where she had not had any realistic opportunity to go to court during the limitation period due to the fact that she, at the time, had no reason to suspect what her origins were (see, *mutatis mutandis*, *Phinikaridou v. Cyprus*, cited above, § 62; and *Turnalı v. Turkey*, no. 4914/03, § 44, 7 April 2009).

58. The Court notes that, at the time of the domestic proceedings, in the Supreme Court's practice the general interest as well as the competing rights and interests both of a putative father and his family were accorded greater weight than a child's right to have his origins legally confirmed. In the present case, the national courts did not have any possibility to balance the competing interests but only concluded that the applicant's claim was time-barred. Thus, the national courts could not consider at all whether or not the general interest in protecting legal certainty of family relationships or the interest of the father and his family outweighed the applicant's right to have an opportunity to seek a judicial determination of paternity. The Court considers that such a straightforward restriction of the applicant's right to institute proceedings for the judicial determination of paternity was not proportionate to the legitimate aim pursued. In this connection the Court reiterates that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective (see *Airey v. Ireland*, 9 October 1979, § 24, Series A no. 32).

59. The Court notes, however, that the Supreme Court has recently changed its previous line of case-law and considered that the application of the five-year time-limit could lead to an apparent contradiction with the Constitution in cases in which legal or factual reasons have prevented the institution of paternity proceedings within the time-limit. Therefore, in that case, the time-limit was left inapplicable on the strength of Article 106 of the Constitution (see *KKO 2012:11)*.

60. Hence, even having regard to the margin of appreciation left to the State, the Court considers that, at the time of the facts of the present case, the application of a rigid time-limit for the exercise of paternity proceedings and, in particular, the lack of any possibility to balance the competing interests by the national courts, impaired the very essence of the right to respect for one's private life under Article 8 of the Convention. In view of the above, the Court finds that a fair balance was not struck in the present

case between the different interests involved and, therefore, that there has been a failure to secure the applicant's right to respect for her private life.

61. Accordingly, the Court finds that there has been a violation of Article 8.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 8

62. The applicant also complained that the five-year time-limit set in national legislation amounted to discrimination against her in comparison to children born after the entry into force of the Paternity Act. She referred to Article 14 of the Convention which reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

63. The Government contested that argument.

A. Admissibility

64. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

65. The Court observes that at the heart of this part of the application is the impossibility for the applicant to have her biological father's paternity legally confirmed. The Court has examined this issue above under Article 8 of the Convention and has found a violation of this Article. In view of those findings it finds it unnecessary to examine the facts of the case separately under Article 14 taken in conjunction with Article 8 of the Convention.

III. REMAINDER OF THE APPLICATION

66. The applicant also complained under Article 13 of the Convention that she could not have the paternity issue examined by the domestic courts.

67. Having regard to the case file, the Court finds that the matter complained of does not disclose any appearance of a violation of the applicant's rights under the Convention. Accordingly, this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

69. The applicant claimed 20,000 euros (EUR) in respect of pecuniary and EUR 10,000 for non-pecuniary damage.

70. The Government considered that there was no causal link between the alleged violation of Articles 8 and/or 14 of the Convention and any pecuniary damage suffered. In any event, the applicant's assessment of pecuniary damage was speculative and could not be accepted as such. Were the Court to find a violation, the Government suggested that the question of pecuniary damage be reserved. As to non-pecuniary damage, the Government considered the applicant's claim too high and that, in any event, compensation for non-pecuniary damage should not exceed EUR 1,000 in total.

71. The Court does not discern any causal link between the violation found and the pecuniary damage alleged (see *Grönmark v. Finland* (just satisfaction), no. 17038/04, §§ 14-15, 12 July 2011; and *Backlund v. Finland* (just satisfaction), no. 36498/05, §§ 14-15, 12 July 2011); it therefore rejects this claim. On the other hand, it awards the applicant EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

72. The applicant also claimed EUR 581.50 for the costs and expenses incurred before the domestic courts and EUR 3,581.89 for those incurred before the Court.

73. The Government considered that the total amount of compensation for costs and expenses should not exceed EUR 3,500 (inclusive of value-added tax).

74. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 4,000 (inclusive of value-added tax) covering costs under all heads.

C. Default interest

75. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaints under Articles 8 and 14 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* by six votes to one that there has been a violation of Article 8 of the Convention;

3. *Holds* unanimously that it is not necessary to examine separately the complaint under Article 14 of the Convention taken in conjunction with Article 8;

4. *Holds* by six votes to one
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 4,000 (four thousand euros), plus any tax that may be chargeable to her, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 January 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early	Ineta Ziemele
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Wojtyczek is annexed to this judgment.

I.Z.
T.L.E.

PARTLY DISSENTING OPINION OF JUDGE WOJTYCZEK

1. I respectfully disagree with the majority view that there has been a violation of Article 8 of the Convention in the present case.

2. In my view, the Finnish Government have convincingly established that the applicant had doubts since she was a teenager about the identity of her biological father. She was 22 years old when the Paternity Act entered into force on 1 October 1976. At that time the church register contained the correct information about the paternity of the applicant. In such a situation, she could have easily checked the information in the church register and initiated the appropriate proceedings to establish paternity within the time-limit defined by Finnish law.

3. In my opinion, the Finnish courts have examined the applicant's case with due diligence. The judgment of the District Court of 18 June 2003 confirms that the applicant, since her teenage years, had doubts about the identity of her biological father. In such a context, according to the District Court, the applicant could have initiated the proceedings within the statutory time-limit. I note further that the Court of Appeal upheld, on the same grounds, the decision of the District Court.

4. Taking into account all relevant facts, I give credence to the statement of the Finnish Government that "the applicant's allegation that she did not know that her stepfather was not her father thus cannot be accepted" (observations of the Government of Finland, dated 17 September 2008, par. 38). Therefore, in the specific circumstances of the present case, the interference with the applicant's rights protected by Article 8 of the Convention does not reach the threshold of a violation.