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

FIRST SECTION

DECISION

Application no. 54056/15
Tadeusz KORDEK
against Poland

The European Court of Human Rights (First Section), sitting on 17 October 2017 as a Committee composed of:
Aleš Pejchal, *President,*
Krzysztof Wojtyczek,
Jovan Ilievski, *judges,*
and Renata Degener, *Deputy Section Registrar,*
Having regard to the above application lodged on 26 October 2015,
Having deliberated, decides as follows:

# THE FACTS

1. The applicant, Mr Tadeusz Kordek, is a Polish national who was born in 1960 and lives in Warsaw.

## A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

### *1. Background to the case*

3. On 25 May 1991 the applicant married K. They had four children: J., born on 1 October 1994; M., born on 1 November 2001; Ju., born on 3 September 2008; and Ja., born on 4 October 2010.

4. On an unspecified date K. brought an action to deny the applicant's paternity of Ja. She also lodged a request to the Warsaw District Prosecutor for an action to be brought on her behalf denying the applicant's paternity

of Ju. She stated that the applicant was not their father. She submitted that their father was a certain P.D.

5. On 17 November 2009 the Ostrów Mazowiecki District Court and on 19 January 2011 the Warsaw-Żoliborz District Court gave judgments ruling that the applicant was not Ju.'s and Ja.'s father.

*2. The applicant's first request for an action to deny paternity*

6. On 3 August 2010 the applicant requested that the Warsaw-Żoliborz District Prosecutor bring an action on his behalf denying his paternity of M. The prosecutor refused (case no. Pc 138/10).

*3. Divorce proceedings*

7. On an unspecified date divorce proceedings were instituted. On 20 March 2012 the Warsaw Regional Court granted a decree of divorce. The court awarded custody of J. and M. to the mother. Both parents were ordered to contribute to the maintenance of the children.

8. On 28 November 2012 the Warsaw-Żoliborz District Court dismissed an action brought by the applicant denying his paternity of M.

*4. The applicant's second and third requests for an action to deny paternity*

9. According to the applicant's submissions he took M.'s handkerchief to a private DNA analysis laboratory and had a DNA paternity test conducted in 2013. The DNA test confirmed that the applicant was not the father of the person whose DNA had been provided.

10. Subsequent requests by the applicant (cases nos. Pc 7/13 and Pc 102/13) were dismissed by the prosecutor.

*5. The applicant's fourth request for an action to deny paternity*

11. On 3 January 2014 the applicant submitted his fourth request, which was rejected by a letter of 22 December 2014 from the Warsaw-Żoliborz District Prosecutor. The prosecutor informed the applicant that he would not bring an action to deny paternity on his behalf. He established that the applicant had known about K.'s affair with a certain J.I. in 2000-2001. However, K. admitted that she had not known who M.'s father had been as she had had sexual relations with both J.I. and the applicant within the same period of time. The prosecutor noted that he had tried to contact J.I. but without success. Therefore, there was no possibility of identifying which man had paternity. Moreover, K. stated in her testimony of 16 December 2014 that the applicant had stood in front of their block of flats with a banner reading: "Mum, you know who my father is and the prosecutor knows it as well. I also have a right to know him. M."; M. had asked the applicant to stop as it embarrassed him. K. stated that after this incident, M.

had become more introverted. According to K.'s statement, M. had thought that the applicant was his father and he had not known or wanted to know any other father.

12. Moreover, in the prosecutor's view, a private DNA test could not be taken into account as reliable evidence. At the same time, K. did not agree to M. undergoing a DNA test. Furthermore, a medical certificate issued to the applicant in April 2001 stated that he had a low chance of becoming a father given his fertility problems. In spite of his doubts as to his paternity of M. he decided not to bring an action to deny paternity within the legal time-limits. The prosecutor also noted that in the divorce proceedings in 2010 the applicant requested that parental rights over J. and M. were granted to him and his wife jointly. The prosecutor concluded that bringing an action to deny paternity had not been in the child's best interest, especially taking into account the fact that on 7 May 2013 M. had been determined as having a disability due to his autism.

13. On 28 July 2015 the Warsaw Regional Prosecutor agreed with the Warsaw-Żoliborz District Prosecutor's findings. It held that the applicant could have lodged the request within six months of his learning of his wife giving birth to the child. Moreover, the applicant had already known about his medical status in 2001, as he had consulted a fertility clinic at that time. The prosecutor also pointed at flagrant inconsistencies in the applicant's declarations. Since the child had been born in wedlock, it had been presumed that the mother's husband was the father.

14. On 9 October 2015, following a request lodged by the applicant, the Ombudsman informed the applicant that he would not bring on his behalf an action to deny paternity. The Ombudsman referred to the previous decisions issued by the prosecution services and agreed with them.

## B. Relevant domestic law and practice

15. Article 62 §§ 1 and 3 of the 1964 Family and Custody Code (*Kodeks Rodzinny i Opiekunczy*) ("the Family Code") provides, in so far as relevant:

> "1. If a child was born during a marriage, or within three hundred days of its termination or annulment, it shall be presumed that he or she is the child of the mother's husband. This presumption shall not apply if the child was born more than three hundred days after a judicial separation.
>
> ...
>
> 3. This presumption may only be rebutted as the result of an action to deny paternity."

16. Under Article 63 of the Family Code, it is possible to bring an action to deny paternity:

> "The mother's husband may bring a legal action to deny paternity within six months of his learning of his wife giving birth to the child, but no later than when the child reaches the age of majority."

17. Similarly, under Article 70 § 1 of the Family Code, a child may deny the paternity of a husband of his or her mother within three years of that child reaching the age of majority.

18. Lastly, under Article 86 of the Family Code, as amended with effect from 13 June 2009, paternity may at any time (as long as the child is alive) be challenged by a prosecutor for reasons of securing the child's best interests or the protection of the interests of the public.

## COMPLAINTS

19. The applicant complains, invoking Articles 6, 8 and 13 of the Convention, that he has no available legal means of challenging his paternity of M.

## THE LAW

20. The applicant complained under Articles 6 § 1, 8 and 13 of the Convention that he could not effectively contest his paternity of M.

21. The Court considers that the applicant has complained primarily about the prosecutor's refusal to bring an action denying paternity. It finds that the complaint should be examined under Article 8 of the Convention alone (see *A.L. v. Poland*, no. 28609/08, § 43, 18 February 2014). This provision 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."

### A. Lawfulness and legitimate aim

22. The Court notes that the prosecutors' decisions to refuse the applicant's request to bring an action on his behalf constituted an interference with his right to respect for his private life.

23. Any such interference will constitute a violation of Article 8 unless it is "in accordance with the law", pursues an aim or aims that are legitimate under paragraph 2 of that provision, and can be regarded as "necessary in a democratic society".

24. The prosecutors' decisions were based on Article 86 of the Family Code and the impugned interference was therefore lawful for the purposes of Article 8.

25. The Court has acknowledged the importance of the protection of legal certainty and finality in family relations (see *Paulik v. Slovakia*, no. 10699/05, § 44, ECHR 2006-XI (extracts), and *Wulff v. Denmark* (dec.), no. 35016/07, 9 March 2010). In the instant case the decision of the prosecution services pursued the legitimate aim of ensuring legal certainty and the security of family relationships, as well as the need to protect the interests of the child.

### B. Necessity of the interference in a democratic society

26. In determining whether the interference was "necessary in a democratic society", the Court refers to the principles established in its case-law. It has to consider whether, in the light of the case as a whole, the reasons adduced to justify that interference were relevant and sufficient for the purposes of paragraph 2 of Article 8 (see *A.L. v. Poland*, cited above, § 65, and *Görgülü v. Germany*, no. 74969/01, § 43, 26 February 2004). Undoubtedly, consideration of what lies in the best interests of the child is of crucial importance in every case of this kind. Depending on their nature and seriousness, the child's best interests may also override those of the parents.

27. In respect of paternity proceedings, the Court has consistently accepted that the need to ensure legal certainty and finality in family relations, as well as to protect the interests of the child, justifies the introduction of a time-limit or other limitations on the institution of such proceedings (see *Grönmark v. Finland*, no. 17038/04, § 47, 6 July 2010, and *A.L. v. Poland*, cited above, § 71).

28. It remains to be examined whether the authorities struck a fair balance in the present case between the general interest in the protection of legal certainty of family relationships and the applicant's interest in having his paternity reviewed in the light of the biological evidence.

29. In the instant case the applicant wished to bring an action denying his paternity of M., who was born in 2001 during the applicant's marriage. Under the relevant domestic law, as applicable at the material time, a husband could repudiate a child conceived in wedlock by bringing relevant civil proceedings within six months of his learning of the birth of the child. The Court notes in this respect that, in spite of his doubts as to

paternity, the applicant decided not to bring an action to deny paternity at that time.

30. Although the applicant was himself prevented from bringing an action to deny paternity after the expiry of the relevant time-limit, it was open to him to request the prosecutor to bring such an action on his behalf, even after the expiry of that period.

31. The Court observes that the prosecutor carefully examined the merits of the case, noted the applicant's arguments and assessed the evidence (see paragraphs 11, 12 and 13 above). The domestic authorities took into account the different interests of the applicant and M., carefully balanced those interests, and provided detailed reasons for their findings. They noted in particular that M. had thought that the applicant was his father and that he had not known or wanted to know any other father (see paragraph 11 above).

32. Furthermore, the Court considers that, contrary to the case of *Mizzi v. Malta*, in the present case the applicant did not submit to the prosecutor any convincing scientific evidence substantiating his doubts as to his paternity (see *Mizzi v. Malta*, no. 26111/02, § 76, ECHR 2006-I (extracts); *Darmoń v. Poland* (dec.), no. 7802/05, 17 November 2009; and *M.D. v. Bulgaria* (dec.), no. 37583/04, 15 November 2011). In particular, the domestic authorities stated that the DNA test results submitted by the applicant had not been reliable (see paragraph 12 above).

33. Moreover, there is no indication that the manner in which the authorities exercised their powers was arbitrary or perfunctory. The Court considers that given the circumstances of the present case, and in view of M.'s medical condition, it was justifiable for the domestic authorities to give greater weight to the interests of the child than to the interest of the applicant in obtaining the determination of a biological fact (see *İyilik v. Turkey*, no. 2899/05, § 34, 6 December 2011, and *Nylund v. Finland* (dec.), no. 27110/95, ECHR 1999-VI).

34. The Court is therefore satisfied that the reasons adduced by the national authorities to justify the interference with the applicant's rights were relevant and sufficient. Consequently, it considers that the measure complained of can be seen as necessary in a democratic society in order to protect the rights of others.

35. It follows that the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Done in English and notified in writing on 16 November 2017.

Renata Degener
Deputy Registrar

Aleš Pejchal
President