



Quashing a formal recognition of paternity at the request of the child's biological father did not breach the Convention

In today's **Chamber** judgment¹ in the case of **Mandet v. France** (application no. 30955/12) the European Court of Human Rights held, by a majority, 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 the quashing of the formal recognition of paternity made by the mother's husband at the request of the child's biological father.

The Court noted that the reasoning in the domestic courts' decisions showed that the child's best interests had been duly placed at the heart of their considerations. In taking this approach, they had found that, although the child considered that Jacques Mandet was his father, his interests lay primarily in knowing the truth about his origins. These decisions did not amount to unduly favouring the biological father's interests over those of the child, but in holding that the interests of the child and of the biological father partly overlapped.

It was also to be noted that, having conferred parental responsibility to the mother, the domestic courts' decisions had not prevented the child from continuing to live as part of the Mandet family, in accordance with his wishes.

Principal facts

The applicants, Florence Mandet née Guillerm, Jacques Mandet and Aloïs Mandet, are French nationals who were born in 1955, 1945 and 1996 respectively and live in Dubai (Emirate of Dubai).

Florence and Jacques Mandet married for the first time in 1986. Three children were born to them. In June 1996 their divorce was pronounced. Florence Mandet gave birth to Aloïs Mandet in August 1996 and he was registered under the mother's name. In September 1997 Jacques Mandet formally recognised the child. Florence and Jacques Mandet remarried on October 2003, which had the effect of legitimising the child.

On 22 February 2005 Mr Glouzmman applied to the Nanterre *Tribunal de Grande Instance*, challenging the recognition of paternity made by Mr Mandet and seeking to have his own paternity outside marriage recognised. By a judgment of 10 February 2006, the court held that as the child had been born more than three hundred days after Florence and Jacques Mandet had separated, the legal presumption that Jacques Mandet was the father ought to be dismissed. The court noted that it was not contested that, at the time of the child's conception, Mr Glouzmman was in a sexual relationship with Ms Mandet and that numerous witness statements confirmed that they had lived together as a couple, and that the child had been known as their common child. The court concluded that the child had not had the status of the Mandet couple's legitimate child on a continuous basis, and that his main interest lay in knowing the truth about his origins. In consequence, the court

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.

declared Mr Glouzmänn's action admissible and ordered genetic testing of the applicants and of Mr Glouzmänn, who was the only one to comply.

On 16 May 2008 the court set aside the recognition of paternity and subsequent legitimisation, held that the child was to resume use of his mother's surname and that Mr Glouzmänn was his father, and ordered that this be entered on the birth certificate. The Versailles Court of Appeal upheld that judgment. It noted, firstly, that it was not necessary to reconsider the appropriateness of biological tests, referring to the reasoning in the judgment of 10 February 2006 to the effect that the child's main interest lay in knowing the truth about his origins. It further noted that the period of conception lay between November 1995 and February 1996 and held that the evidence submitted by Mr and Ms Mandet did not establish that they had continued to live together or been in a sexual relationship. In contrast, the court of appeal considered that the evidence submitted by Mr Glouzmänn proved that at the time the child was conceived, he was in a sexual relationship with Florence Mandet, that he had lived with her at the time of conception and also after the child's birth, and that the child was known as their common child. The court of appeal also noted that the task of the *ad hoc* guardian responsible for representing the underage child's interests had been hindered by Mr and Ms Mandet, on account of the fact that the child no longer returned to France, even for the school holidays.

Mr and Ms Mandet appealed on points of law. The Court of Cassation dismissed that appeal.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), the applicants complained about the quashing of the recognition of paternity made by Jacques Mandet, and about the annulment of the child Aloïs Mandet's legitimisation. They considered these measures to be disproportionate, having regard to the best interests of the child which, they submitted, required that the legal parent-child relationship, established for several years, be maintained, and that his emotional stability be preserved. Lastly, they criticised the court for having ordered the child to undergo a genetic test against his will, and for having considered his refusal as a factor which confirmed the untruthfulness of his recognition by Jacques Mandet. Relying on Article 6 § 1 (right to a fair hearing), the applicants alleged a violation of their right to have a fair hearing by an impartial tribunal.

The application was lodged with the European Court of Human Rights on 25 April 2012.

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

Angelika **Nußberger** (Germany), *President*,
 Khanlar **Hajiyev** (Azerbaijan),
 Erik **Møse** (Norway),
 André **Potocki** (France),
 Yonko **Grozev** (Bulgaria),
 Síofra **O'Leary** (Ireland),
 Carlo **Ranzoni** (Liechtenstein),

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

Decision of the Court

Article 8 (right to private and family life)

The Court noted that the domestic courts had set aside the formal recognition of paternity made by Jacques Mandet as well as the child's subsequent legitimisation, decided that he was to resume using his mother's surname, held that Mr Glouzmänn was his father and organised contact and

residence rights between them. It noted that by quashing in this way the legal parent-child relationship between the child and Jacques Mandet, the domestic courts had changed, from a legal viewpoint, an important element of the family structure within which the child had developed for several years, replacing it with another legal father-child relationship. It concluded that the measure complained of by the applicants amounted to an interference with the child's right to respect for his private and his family life.

Having regard to Article 339 of the Civil Code, the Court noted that interference had been in accordance with the law and held that it had the aim of protecting the rights and freedoms of others, namely Mr Glouzmman.

Referring to its case-law, the Court emphasised that France enjoyed discretion ("a margin of appreciation") in assessing whether the interference was necessary in a democratic society within the meaning of Article 8. However, whenever the situation of a child was in issue, the Court had to have regard to the essential principle according to which the best interests of that child were paramount.

The Court noted that it was not correct that the domestic courts had taken the child's refusal to submit to the tests as a factor confirming their conclusions as to the untruthfulness of the formal recognition of paternity. The Versailles Court of Appeal's judgment indicated that what they had taken into account in this connection was the refusal by Mr and Ms Mandet to undergo this test, and their refusal to take the child – aged under ten when it was ordered – to see the expert. The finding of a parent-child relationship between the child and Mr Glouzmman had not been based on this refusal, but on a calculation of the legal period of conception and an assessment of the evidence submitted in adversarial argument by the parties. On this basis, the court of appeal had found that Mr and Ms Mandet had not proved that they were living together or had maintained a sexual relationship during the period the child was conceived and that, by contrast, it had been established that Mr Glouzmman had been in a sexual relationship with Florence Mandet and lived with her, not only at the time of conception but also after the birth, and that the child had been known as their common child.

The Court then noted that the domestic courts had done what could be expected of them to involve the child in the decision-making process. It noted that the Nanterre *tribunal de grande instance* had appointed an *ad hoc* guardian to represent the child's interests in the proceedings, but that she had been unable to meet him because Mr and Mrs Mandet, and the child, had left France. Moreover, the Court of Cassation had examined the question of the child's right to be heard in the proceedings and had held that this right had been respected. It had noted that the child had been informed of the proceedings and knew that his paternity was being challenged, and that he had sent letters to the judges in which he expressed his wish not to change his surname and to retain his legal parent-child relationship with Jacques Mandet, without, however, asking to be heard.

In addition, the Court noted that the reasoning in the domestic courts' decisions showed that the child's best interests had been duly placed at the heart of their considerations. In taking this approach, they had found that, although the child considered that Jacques Mandet was his father, his interests lay primarily in knowing the truth about his origins.

It appeared to the Court that the domestic courts had not failed to attach decisive importance to the child's best interests, but instead had held that those interests did not necessarily lie where the child perceived them – in maintaining the parent-child relationship as established and in preserving emotional stability – but rather in ascertaining his real paternity. The courts' decisions did not amount to unduly favouring Mr Glouzmman's interests over those of the child, but in holding that their interests partly overlapped. By acting in this way, the domestic courts had not overstepped the discretion ("margin of appreciation") enjoyed by them.

Lastly, it was to be noted that by conferring parental responsibility to the mother, the domestic courts' decisions had not prevented the child from continuing to live as part of the Mandet family, in accordance with his wishes.

Consequently, the Court held that there had been no violation of Article 8.

Article 6 § 1 (right to a fair hearing)

Noting that the applicants had had the benefit of adversarial procedure and had been able to present the arguments and evidence that they considered relevant to their case, and that the decisions issued by the domestic courts had been duly reasoned, the Court did not find any evidence indicating that their right to a fair hearing had been breached. This part of the application was manifestly ill-founded and had to be rejected.

Separate opinion

Judge Nußberger expressed a dissenting opinion, which is annexed to the judgment.

The judgment is available only in French.

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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.