



Refusal to reopen paternity proceedings dating back 40 years breached the Convention

In today's **Chamber** judgment¹ in the case of [Boljević v. Serbia](#) (application no. 47443/14) 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 domestic courts' refusal to reopen paternity proceedings dating to the 1970s because they were time-barred. The applicant alleged that that decision had denied him the opportunity to prove his origins via modern DNA testing methods.

The Court found that, although time-limits in paternity-related proceedings were intended to preserve legal certainty, that had not been a sufficient enough reason to deprive the applicant of the right to discover the truth about an important aspect of his personal identity, without weighing up the interests at stake in his case.

Indeed, the domestic law on deadlines for reopening proceedings had not allowed the authorities to carry out such a balancing exercise, taking into account the very specific circumstances of the applicant's case, namely that he had only found out about the paternity proceedings in 2011/12 when the person who he thought was his biological father had died and inheritance proceedings were instituted.

Principal facts

The applicant, Peđa Boljević, is a Serbian national who was born in 1969 and lives in Ečka (Serbia).

Up until 2011/12, the applicant considered it undisputed that a certain Mr A was his biological father.

However, during the inheritance proceedings following Mr A's death, the applicant became aware of a final judgment dating to the 1970s which concluded that he could not have been his biological father. The courts had essentially reached that conclusion on the basis of witness testimony as to when the applicant's mother and Mr A had met.

In January 2012 the applicant and his mother requested the reopening of the paternity proceedings. They argued in particular that the applicant had only just found out about the 1970 judgments, and that, while DNA testing had not been possible at that time, such a test could now be carried out on the basis of a court order. Moreover, Mr A had always been recognised as the applicant's father in the official register of births.

The courts at first and second instance refused the request, finding that it was time-barred. In particular, requests for reopening on the basis of new facts or evidence had to be lodged within five years of the final decision in the case, meaning that the applicant would have had to lodge his request in 1977. The Court of Appeal also added that the applicant's argument that he had only

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.

recently been informed of the 1970 judgments was irrelevant since his rights had been properly secured in the original proceedings through a legal guardian.

The Constitutional Court also ruled against the applicant in 2014.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), Mr Boljević complained about being denied the opportunity to prove that Mr A was his biological father by means of a DNA test.

The application was lodged with the European Court of Human Rights on 20 June 2014.

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

Jon Fridrik **Kjølbro** (Denmark), *President*,
Faris **Vehabović** (Bosnia and Herzegovina),
Branko **Lubarda** (Serbia),
Stéphanie **Mourou-Vikström** (Monaco),
Georges **Ravarani** (Luxembourg),
Jolien **Schukking** (the Netherlands),
Péter **Paczolay** (Hungary),

and also Andrea **Tamietti**, *Section Registrar*.

Decision of the Court

The Court found that the Serbian judicial authorities' refusal to reopen the civil proceedings concluded in the 1970s had been in accordance with the law. It could see no evidence of arbitrariness in the reasoning of the first and second instance courts.

Furthermore, that refusal had pursued the legitimate aims of ensuring legal certainty and protecting the rights of others. In particular, time-limits in paternity-related proceedings were intended to protect the interests of purported fathers from stale claims, and to prevent possible injustice if courts were required to make findings of fact that went back many years.

However, the preservation of legal certainty was not in itself a sufficient ground for depriving the applicant of the right to discover the truth about his origins, bearing in mind the specific circumstances of his case and what was at stake for him, namely finding out about an important aspect of his personal identity.

Indeed, as acknowledged by the Government, there had been no legal way for the applicant to have the deadline for his request to reopen the proceedings extended. No balancing of the relevant interests, taking into account his specific situation, could therefore be carried out.

The Court noted in particular that, as far as the applicant had known, Mr A was his biological father until the inheritance proceedings in 2011/12. Moreover, Mr A had still been identified as his father in birth certificates issued in 2014 and 2019.

In any event, the private life of a deceased person, in this case Mr A, could not be adversely affected by a request for a DNA sample, and there was no indication in the case file as to what his family's reaction would have been to a DNA test.

Regardless of the leeway ("margin of appreciation") the Court gave to States to decide on such sensitive matters as raised in the applicant's case, it therefore found that the Serbian authorities had not secured to him respect for his private life as guaranteed under the Convention.

There had accordingly, in the very specific circumstances of the present case, been a violation of Article 8 of the Convention.

Just satisfaction (Article 41)

The Court held that the finding of a violation was in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant.

The judgment is available only in English.

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Press contacts

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

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

Denis Lambert (tel: + 33 3 90 21 41 09)

Inci Ertekin (tel: + 33 3 90 21 55 30)

Patrick Lannin (tel: + 33 3 90 21 44 18)

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.