



Romanian authorities should have granted request to reopen proceedings to establish paternity

In today's Chamber judgment in the case of [Ostace v. Romania](#) (application no. 12547/06), which is not final¹, 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 Mr Ostace's inability to obtain the revision of a judgment establishing his paternity in spite of an extra-judicial forensic examination proving the contrary. The request was rejected on the ground that the document in question did not exist at the time of the initial proceedings.

The Court held that by declaring inadmissible Mr Ostace's request to reopen the paternity suit the authorities had breached his right to respect for his private life.

Principal facts

The applicant, Augustin Ostace, is a Romanian national who was born in 1952 and lives in Leverkusen (Germany).

In a judgment of 6 March 1981, following proceedings brought by the child's mother to establish paternity, Mr Ostace was declared to be the father of the child, H.-A., born in 1980. In 2003 the applicant and H.-A. both underwent an extra-judicial forensic examination to verify whether they were biologically related. The test result was undeniably negative.

Based on the expert's report, Mr Ostace sought the revision of the 1981 judgment. The first-instance court declared his request inadmissible as the expert's report was a document that had not existed at the time of the 1981 judgment. An ordinary appeal and an appeal on points of law by Mr Ostace were dismissed.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), Mr Ostace complained that he had been unable to obtain recognition by the courts that he was not the father of H.-A., even though the examination he had undergone in 2003 with his putative son had clearly ruled out his paternity.

The application was lodged with the European Court of Human Rights on 16 March 2006.

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

Josep Casadevall (Andorra), *President*,
Alvina Gyulumyan (Armenia),

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

Dragoljub Popović (Serbia),
Luis López Guerra (Spain),
Johannes Silvis (the Netherlands),
Valeriu Grițco (the Republic of Moldova),
Iulia Antoanella Motoc (Romania),

and also Santiago Quesada, *Section Registrar*.

Decision of the Court

Article 8

The Court observed that Mr Ostace had not had any possibility of challenging the judicial declaration of his paternity under the applicable domestic law. The Court was prepared to admit that this inability to challenge could be explained by the legitimate interest in guaranteeing public safety and the stability of family relations and to protect the child's interests. However, it took the view that by declaring inadmissible the request to reopen the paternity suit, even though all the parties seemed to be in favour of establishing the truth concerning H.-A.'s descent, the authorities had failed to strike a fair balance between the interests at stake.

Moreover, the Court found that, under the new Civil Code, paternity suits did not become time-barred throughout the life of the child. That development in Romanian law had occurred after the relevant facts of the case and could not have helped Mr Ostace.

As the national legal system had not guaranteed, as it should have done, respect for Mr Ostace's private life, there had been a violation of Article 8.

Just satisfaction (Article 41)

The Court held that Romania was to pay Mr Ostace 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 3,000 in respect of costs and expenses.

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.