



## Two men claiming to be biological fathers were unable to have their paternity established: violation of their right to respect for their private lives

In today's **Chamber** judgment<sup>1</sup> in the case of [L.D. and P.K. v. Bulgaria](#) (applications nos. 7949/11 and 45522/13) 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 inability for L.D. and P.K., who claimed to be the biological fathers of children born out of wedlock, to challenge declarations of paternity by two other men and to have their own paternity established.

The Court found, in particular, that the right to respect for private life of L.D. and P.K. had been breached on account of their inability under domestic law to establish that they were the fathers of children solely because other men had already recognised the latter as their own, without the particular circumstances of each case and the situations of the various protagonists (the child, the mother, the father by law and the man claiming to be the biological father) being taken into account.

### Principal facts

The applicants, L.D. and P.K., are Bulgarian nationals who were born in 1963 and in 1979. L.D. lives in Sofia and P.K. lives in Mezdra (Bulgaria).

**Between 2007 and 2010, L.D.** had a sexual relationship with I., who became pregnant in January 2010. L.D., having lost contact with I. during her pregnancy, hired a private detective to find her, and told the police of his fear that the baby might fall into the hands of traffickers. He then learned that I. had given birth to a girl in October 2010 and that a man named V. had recognised the child as his own. With the agreement of I., the child was living with V., his wife and their child, and that couple met the child's material, emotional and educational needs. In December 2010 L.D. contacted the public prosecutor's office, which carried out an investigation during which I. and V. stated that the baby girl had been born as a result of an extramarital relationship between them. The public prosecutor thus decided not to prosecute. In December 2010 L.D. applied to the Sofia Municipal Court to establish his paternity, but the proceedings were closed in July 2011, as the court found among other things that L.D. had no standing. That decision was upheld on appeal and by the Court of Cassation. In the meantime, the public prosecutor had lodged with the Sofia Municipal Court, following a complaint by L.D. in May 2011, an application for the annulment of V.'s declaration of paternity; but as the prosecutor did not pursue the matter, the court discontinued the proceedings in June 2012. That decision was upheld on appeal and by the Court of Cassation. L.D. then brought a further suit to have V.'s declaration of paternity declared null and void, but was unsuccessful.

**Between 2009 and 2010, P.K.** had a sexual relationship with one of his colleagues at work (R.) and they split up in March 2010. P.K. then left his job and lost contact with R. In December 2010 he learned that R. had given birth to a boy on 1 December 2010 and that a man named S. had

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](http://www.coe.int/t/dghl/monitoring/execution).

recognised the child as his own. In the following months, P.K. insisted on undergoing a DNA test, which showed that it was 99.99% certain that P.K. and R. were the child's genetic parents. In October 2011, P.K. applied to the Sofia Municipal Court to establish his paternity and challenge that of S., but his application was declared inadmissible in May 2012, as the court found he had no standing. That decision was upheld on appeal and P.K.'s appeal on points of law was not admitted, as the Court of Cassation found that only the mother and child were entitled to challenge the established paternity.

## Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), L.D. and P.K. complain about their inability to challenge the declarations of paternity in respect of children of whom they claim to be the biological fathers and to establish their own paternity. Under Article 6 (right to a fair hearing), they also rely on their right of access to a court. P.K. also relies on Article 13 (right to an effective remedy). The Court decided to examine these complaints only under Article 8 of the Convention.

Relying on Article 46 (binding force and execution of judgments) L.D. asked the Court to indicate to the Government the measures to be taken to enforce the judgment.

The applications were lodged with the European Court of Human Rights on 5 January 2011 and on 4 July 2013.

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

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

and also Milan **Blaško**, *Deputy Section Registrar*.

## Decision of the Court

### [Article 8 \(right to respect for private and family life\)](#)

Bulgarian law did not allow a man claiming to be the biological father of a child whose paternity had already been established by recognition to directly challenge that recognition or to establish his own paternity. That prohibition appeared not to allow for any exception, and it had been applied in practice in the cases of L.D. and P.K. because the domestic courts had rejected their claims on the grounds that they lacked standing. To dismiss those claims, the domestic courts had only taken account of the fact that a recognition of paternity had already been declared and at no time had they taken into account the circumstances of each case or the situations of the various protagonists (the child, the mother, the father by law and the man claiming to be the biological father).

**Domestic law enabled the public prosecutor's office and the territorial social welfare unit to bring proceedings to challenge paternity**, which could lead to a declaration that a declared recognition of paternity was null and void if it did not correspond to the genetic relationship. However, neither the Family Code nor any other statutory instrument indicated the situations in which the authorities should take such an initiative. It transpired from domestic case-law and observations submitted by the Social Welfare Agency that proceedings under the Family Code<sup>2</sup> would be brought where there

was a suspicion that the recognition had been used to circumvent the law on adoption or where there was a risk to the child. Such a suit was not, however, directly accessible to the applicants, as it remained subject to the decision of the public authorities (public prosecutor or local department of social welfare), who had discretion as to its use in a particular case. In addition, there were no rules accessible to the public indicating the situations in which the authorities could or were obliged to exercise that power or what the procedure was. A man claiming to be the biological father of a child could certainly report this to the authorities and ask them to bring proceedings but the authorities had no statutory obligation to hear such a claimant or to provide him with grounds for their decision in the event of refusal. In addition, any refusal could not be appealed against before the courts.

In order to decide whether or not to bring a suit, the authorities in question were not required to examine the various interests at stake. Whilst they apparently took the child's best interests into account, particularly in a case where there was a risk to the child's health or well-being, or ensured compliance with adoption law, it did not appear that those interests were weighed against the other interests at stake, especially those of the biological father. The aim of such a suit was not in fact to lead to the judicial establishment of the paternity of the biological father, but only the annulment of the legal parent-child relationship established by recognition. Such proceedings thus appeared to be reserved for exceptional situations concerning compliance with the law or a risk for the child, and not a mere conflict concerning the establishment of paternity. In the present case, that remedy did not appear to be applicable in the situation of P.K. As to L.D., while proceedings for the annulment of recognition had indeed been brought by the public prosecutor following the applicant's complaint, the proceedings had been closed when the public prosecutor decided not to pursue the matter, but without providing any grounds for that decision; the domestic courts had not assessed whether the discontinuance was appropriate in the light of the various interests at stake and the applicant had not been able to challenge it or appeal against the decision. Consequently, the possibility of asking the public prosecutor's office or the local social welfare department to bring proceedings for the annulment of recognition on the basis of the Family Code<sup>2</sup> did not appear to be an effective remedy capable of providing redress for the situation complained of by L.D. and P.K.

**Article 64 of the Family Code allowed a child's paternity to be recognised before birth, from the time of its conception.** However, that had not always been possible in reality (in the present case, P.K. had probably not been informed about the pregnancy) and in any event it was not common practice in Bulgaria. In the case of early recognition, the mother had the possibility of rendering it ineffective merely by declaring her objection. If the mother then agreed to recognition by another man, before the man claiming to be the father who made the first declaration of recognition had been able to bring a paternity suit, the latter, even if he was the biological father, would be in the same situation as the applicants, in other words unable to establish his paternity. Accordingly, the possibility of making a declaration of paternity before birth could not be regarded as an effective means of establishing paternity in the absence of agreement by the mother. In those circumstances the Court could not reproach L.D. and P.K. for failing to make a declaration of paternity before the birth, and the applicants had in fact taken steps to establish their paternity as soon as they had become aware of the respective births.

**In conclusion**, the Court found that L.D. and P.K. did not have an effective opportunity to challenge the legal parent-child relationship established by recognition and did not have any possibility of directly establishing their own paternity, noting that the situation had been created by the Bulgarian legislature with the aims of ensuring the stability of family relationships, and of giving priority to the legal relationship already established over the possibility of establishing biological paternity. In the Court's view, while it was of course reasonable for the domestic authorities to take account of the fact that the child already had an established legal parent-child relationship, other factors should

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<sup>2</sup> Article 66, alinéa 5.

have been taken into consideration in situations such as those in the present case. The Court noted in this connection that, in dismissing the paternity suits filed by the applicants, the domestic courts, pursuant to the provisions of the Family Code, relied solely on the fact that a recognition of paternity had already been made, without taking into account the particular circumstances of each case or the situation of the various protagonists – the child, the mother, the father by law and the putative biological father. In those circumstances the Court found that, in spite of the broad margin of appreciation enjoyed by the State in such matters, the right of the applicants right to respect for their private life had not been upheld. It thus found that there had been a violation of Article 8 of the Convention.

#### [Article 46 \(binding force and execution of judgments\)](#)

The Court took the view that the national authorities, in cooperation with the Committee of Ministers, were best placed to decide on the individual and general measures to be adopted for the execution of the judgment.

#### [Article 41 \(just satisfaction\)](#)

The Court held that Bulgaria was to pay each applicant 6,000 euros (EUR) in respect of non-pecuniary damage, and in respect of costs and expenses, EUR 2,456 to L.D. and EUR 2,045 to P.K.

*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.