



## Violation of right to respect for private life of a man claiming to be a child's biological father, after unsuccessful attempts to have his paternity recognised

In today's **Chamber judgment**<sup>1</sup> in the case of [Koychev v. Bulgaria](#) (application no. 32495/15) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 8 (right to respect for private life) of the European Convention on Human Rights.**

In this case, the applicant (Mr Koychev) claimed to be the biological father of a child born outside marriage, and complained of the fact that his actions to have his paternity recognised had been rejected on the grounds that the child had been recognised by another man, the mother's new husband.

The Court found that Mr Koychev had unsuccessfully attempted to be recognised as the child's biological father, in particular by filing a notarised statement recognising paternity, by bringing several sets of judicial proceedings and by contacting the prosecutor's office and the social welfare services. The Court held that although the domestic courts and authorities had, in their decisions, set out certain reasons which, in their view, justified the refusal to allow Mr Koychev to establish his paternity, the decision-making process by which those decisions had been reached had not guaranteed the requisite protection of the applicant's interests and had not allowed for a detailed assessment of the facts or a weighing up of the various interests at stake. In spite of the broad margin of appreciation enjoyed by the State in such matters, Mr Koychev's right to respect for his private life had thus not been upheld.

### Principal facts

The applicant, Stoycho Koychev, is a Bulgarian national who was born in 1975 and lives in Pomorie (Bulgaria).

From 2003 onwards Mr Koychev cohabited with a woman (S.S.). She became pregnant in 2005, and the couple separated in October of that year.

In 2006 S.S. gave birth to a son. According to Mr Koychev, it was understood between him and the mother that the child was his son; he saw the child, who called him "daddy", on a regular basis; for several years, however, he took no steps to have his paternity recognised, on the grounds that the mother objected.

In 2010 S.S. began a relationship with another man (G.G.), whom she married in 2012.

In 2013 Mr Koychev made a statement before a notary, recognising the child. The following month G.G. applied for the full adoption of the child. Mr Koychev asked the court to suspend this adoption procedure, on the grounds that he had already recognised the child. The civil registry services informed the mother about the recognition of paternity filed by Mr Koychev. She lodged an objection, which had the effect of making Mr Koychev's recognition null and void. On the same date

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).

G.G. made a statement before a notary, recognising his paternity of the child. The mother did not object, and this recognition of paternity took effect.

In the meantime, Mr Koychev brought an action to establish paternity before the Sofia City Court; he then learned that G.G. had recognised the child and had been entered as the father on the birth certificate, since the mother had not lodged an objection. In consequence, Mr Koychev's action was declared inadmissible, as the child's legal parent-child relationship was already established.

In 2014 Mr Koychev brought an action to have it established that G.G. was not the child's biological father. His action was declared inadmissible on the grounds that Mr Koychev did not have standing to challenge the recognition of paternity made by another man; only the mother and the child had standing to do so. This order was upheld on appeal. An appeal by Mr Koychev on points of law was dismissed in February 2015.

In the meantime, Mr Koychev had asked the Sofia public prosecutor's office and the local department of social welfare to bring an action to have G.G.'s recognition of paternity set aside. The prosecutor's office refused to bring an action of this sort, since the actions lodged by Mr Koychev were intended to achieve the same result. The department of social welfare considered that such a step was possible only when it was necessary in the interests of a child, particularly if he or she was in danger, which was not the case here.

In 2015 Mr Koychev brought a second set of proceedings to establish that G.G. was not the child's biological father, but the domestic courts held that the Family Code did not permit an alleged biological father to challenge a recognition-of-paternity statement. On 11 April 2016 the Supreme Court of Cassation held that the child was living with his mother and G.G., who was his legitimate father, and that to challenge this legally established parent-child relationship would not be in the child's interests.

## Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), Mr Koychev maintained that Bulgarian law did not allow a child's biological father to challenge a decision recognising another man as the child's father and to attempt to have the child recognised as his own.

The application was lodged with the European Court of Human Rights on 24 June 2015.

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

Faris **Vehabović** (Bosnia and Herzegovina), *President*,  
Yonko **Grozev** (Bulgaria),  
Iulia Antoanella **Motoc** (Romania),  
Branko **Lubarda** (Serbia),  
Carlo **Ranzoni** (Liechtenstein),  
Stéphanie **Mourou-Vikström** (Monaco),  
Jolien **Schukking** (the Netherlands),

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

## Decision of the Court

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

The Court considered that it had to examine whether the domestic authorities had struck a fair balance between the various public and private interests at stake, and the quality of the decision-making process which had led to their decisions.

**With regard to the reasons put forward by the national authorities**, the Court noted that the reasoning adopted by the Supreme Court of Cassation and the department of social welfare in the present case (namely the risk of disrupting the child's emotional and familial balance, and Mr Koychev's lack of diligence in recognising his paternity), and the objective underlying the domestic legislation (namely that of giving priority to legal parent-child relationships which corresponded to social and familial reality) were, in principle, capable of justifying a limitation on the possibility of establishing biological paternity.

However, the Court considered that other factors should have been taken into consideration in order to take account of all the interests involved. Thus, in spite of Mr Koychev's allegations that he had maintained an on-going relationship with the child S., who, he submitted, called him "daddy", neither the department of social welfare nor the Supreme Court of Cassation had attempted to examine the relationship that existed between Mr Koychev and the child, and the importance of this relationship for these two persons. Equally, although the Supreme Court of Cassation had criticised Mr Koychev for failing to recognise the child for about seven years, it had not considered it necessary to assess the explanations provided by the applicant, to the effect that he had acted in this way at the mother's request, and not from a lack of interest in the child.

Furthermore, contrary to what the Supreme Court of Cassation seemed to consider in stating that Mr Koychev himself had created the situation of which he complained, the fact that he had not recognised the child for several years did not seem to affect his capacity to establish his paternity under domestic law, since the possibility of recognising a child was not subject to any time-limit and could be done at any point, provided that no other legal parent-child relationship had been established. Mr Koychev had thus been able to take this step, validly, in April 2013; in view of the objection lodged by the mother, he had subsequently brought an action for the establishment of paternity, which would normally have made it possible to verify his biological paternity. Although his action was not ultimately examined, this was because the child's mother had immediately accepted the subsequent recognition registered by G.G., about which Mr Koychev had not been informed and which he had no opportunity of opposing under domestic law. However, the Supreme Court of Cassation had not taken these circumstances into account in its decision of 11 April 2016.

**With regard to the decision-making process followed in this case**, the Court noted that, although the department of social welfare seemed to have carried out a detailed examination of the facts, notably by visiting the child's home, before concluding that it was not in the latter's interest to call into question the legal parent-child relationship in respect of the mother's husband, Mr Koychev had been unable to participate in this procedure and had been unable to defend his interests. He had been informed about the department's refusal only through ordinary letters, and not through a reasoned decision that could have been appealed against to the courts. Indeed, the applicable legislation stated that, in deciding whether it should exercise its prerogative to challenge in court a recognition of paternity, the department of social welfare had to have regard to the best interests of the child, but it was not required to take into consideration the various interests at stake, especially those of the alleged biological father.

Admittedly, Mr Koychev had then been able to bring an action before the civil courts, challenging the recognition, and had been able to present his case in adversarial proceedings. However, the domestic courts did not seem to have carried out a detailed examination of the situation by hearing the parties concerned, and particularly by questioning the child. More specifically, the Supreme Court of Cassation, in its decision of 11 April 2016, had relied on the conclusions of the department of social welfare, which were about two years old, had been drawn up in proceedings which did not provide sufficient guarantees in respect of Mr Koychev's interests and had not enabled the various interests at stake to be weighed up.

Thus, Mr Koychev had attempted unsuccessfully to be recognised as the child's biological father, in particular by filing a notarised statement recognising his paternity, by bringing several sets of judicial

proceedings and by contacting the prosecutor's office and the social welfare services. Although the domestic courts and authorities had, in their decisions, provided certain reasons which, in their view, justified a refusal to allow the applicant to establish his paternity, the decision-making process by which those decisions were reached did not seem to have guaranteed the requisite protection of Mr Koychev's interests and did not allow a detailed assessment of the facts and a weighing up of the various interests at stake. In consequence, the Court considered that, in spite of the broad margin of appreciation enjoyed by the State in such matters, Mr Koychev's right to respect for his private life had not been upheld. **It followed that there had been a violation of Article 8 of the Convention.**

#### Just satisfaction (Article 41)

The Court held that Bulgaria was to pay Mr Koychev 6,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,000 in respect of costs and expenses.

*The judgment is available only in French.*

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on [www.echr.coe.int](http://www.echr.coe.int). To receive the Court's press releases, please subscribe here: [www.echr.coe.int/RSS/en](http://www.echr.coe.int/RSS/en) or follow us on Twitter [@ECHR\\_CEDH](https://twitter.com/ECHR_CEDH).

#### Press contacts

[echrpess@echr.coe.int](mailto:echrpess@echr.coe.int) | tel.: +33 3 90 21 42 08

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

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

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

**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.