



COUR EUROPÉENNE DES DROITS DE L'HOMME  
EUROPEAN COURT OF HUMAN RIGHTS

FIRST SECTION

**CASE OF PHINIKARIDOU v. CYPRUS**

*(Application no. 23890/02)*

JUDGMENT

STRASBOURG

20 December 2007

**FINAL**

***20/03/2008***

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Phinikaridou v. Cyprus,**

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mrs N. VAJIĆ, *President*,

Mr L. LOUCAIDES,

Mr A. KOVLER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS,

Mr G. MALINVERNI, *judges*,

and Mr S. NIELSEN, *Section Registrar*

Having deliberated in private on 29 November 2007,

Delivers the following judgment, which was adopted on the last-mentioned date:

**PROCEDURE**

1. The case originated in an application (no. 23890/02) against the Republic of Cyprus lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Cypriot national, Mrs Yannooula Phinikaridou (“the applicant”), on 7 June 2002.

2. The applicant, who had been granted legal aid, was represented by Mr C. Efstathiou, a lawyer practising in Nicosia. The Cypriot Government (“the Government”) were represented by their Agent, Mr P. Clerides, Attorney-General of the Republic of Cyprus.

3. The applicant alleged a violation of Articles 6 and 8 of the Convention in that the proceedings she had instituted for judicial recognition of paternity had been held to be time-barred under the applicable law.

4. By a decision of 31 August 2006, the Court declared the application partly admissible.

5. Neither the applicant nor the Government filed further written observations on the merits of the case (Rule 59 § 1).

6. The applicant submitted her claims for just satisfaction and the Government made their comments on that matter.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1945 and lives in Nicosia.

#### A. Background to the case

8. The applicant was born out of wedlock. Her biological mother abandoned her outside the house of a woman who gave her to Mrs Maria Phinikaridou. The latter brought her up. Although estranged from her biological mother, the applicant did not lose all contact with her. In December 1997, when the applicant was fifty-two years old, her biological mother, just before dying, told her the name of her biological father in the presence of the applicant's son. Her mother died in January 1998.

9. On 24 June 1999 the applicant lodged an application with the Nicosia Family Court requesting judicial recognition of paternity on the basis of section 20(2) of the Children (Relatives and Legal Status) Law 1991 (hereinafter “the Children Law”). The respondent, whom the applicant claimed was her father, objected to the application and denied paternity. Without going into the merits of the paternity claim, he maintained that the applicant's claim was time-barred under section 22(3) of the above-mentioned Law. The applicant claimed, in reply, that the aforementioned section and, in addition, section 25(1) of the same Law setting in motion the period of limitation on the date of entry into force of the Law rather than on the date when she acquired knowledge of her father's identity, were unconstitutional. In particular, she argued that they were contrary to Articles 15 § 1 (the right to respect for private and family life), 28 (the principle of equality and non discrimination) and 30 § 1 (the right of access to a court) of the Constitution. The applicant contended that she had been prevented from having recourse to court and from determining through judicial proceedings whether or not she was the respondent's daughter. She had also been placed in a disadvantageous position with regard to other litigants who happened to acquire information concerning their father within the statutory time-limit.

10. On 15 September 1999 the respondent applied to the court for trial of the preliminary matter of whether the applicant's claim was statute-barred. On 30 October 2000 the applicant lodged an application requesting the court to refer the question to the Supreme Court.

11. On 17 May 2001 the Nicosia Family Court, following the agreement of the parties, decided to refer the issue of constitutionality of section 22(3) to the Supreme Court under Article 144 of the Constitution.

## B. The Supreme Court's judgment

12. In its judgment of 23 November 2001 the Supreme Court, by a majority (Judges Artemides, Nicolaides, Kallis, Iliades, Kramvis and Gavrielides), held that sections 22(3) and 25(1) of the Children Law complied with the relevant provisions of the Constitution and the Convention. In particular, the Supreme Court noted the following:

“The applicant's lawyer suggests that the violation of Articles 15 and 30 of the Constitution is caused by the fact that the applicant learnt the identity of her natural father in 1997. It was, consequently, objectively impossible to lodge the application for her recognition within the three-year period from the date the Law came into force. Therefore, as he concludes, Article 30 § 1 of the Constitution is also violated because the applicant is deprived of access to court to assert her statutory right, a right which originates directly from Article 15 of the Constitution, which protects private and family life. A further suggestion of the applicant's lawyer, concerning unfavourable discrimination caused by the different time-limits for the exercise of other rights that are provided for by the Law, we will not deal with because it was not pursued.

...

The matters raised are extremely serious because they touch on the institution and the function of the family: the most important nucleus of society, the members of which are bound by the deepest and purest feelings of love and solidarity. The State considers self-evident the value of the institution of the family, which it also protects in its most powerful statute, the Constitution. This also regulates the whole range of family relationships – also on the basis of the criterion of their lawful functioning in society as a whole – in legislative rules which constitute the basis of the body of law known as Family Law.

The basis of our discussion is Articles 15 and 30 of the Constitution, corresponding to Articles 8 and 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which was ratified by our House of Representatives by Law No. 39/62. Accordingly, the decisions of the European Court of Human Rights and the Commission on the matters with which we are concerned illustrate the approach to be taken, as does our jurisprudence .

...

In the recent decision of the Full Court of the Supreme Court in *Pantelis Yiorgalla v. Soulla Hadjichristodoulou* (2000) 1 A.A.D. 2060, we dealt with the provisions of section 11(1)(a) of the same Law, according to which the husband of the mother is barred from contesting paternity after one year has elapsed from the time he is informed of the birth and the circumstances from which the conception of the child resulted. The Family Court had also addressed the same questions with reference again to Articles 15 § 1 and 30 § 1 of the Constitution.

We refer to our above decision, the reasoning of which we believe holds in the present case as well without being distinguished on any ground whatsoever. The legal principles, as discussed and adopted, are applicable here too.

...

The general principle which emerges from the decisions of the European Court of Human Rights is that the right of access to court is subject to legitimate restrictions, precisely so that it can function rationally for all interested parties in the judicial process. The ECHR considers that time-limits on the exercise of a right serve fundamental purposes inseparably interwoven with certainty about the rights of individuals and are intended to ensure the finality of the dispute.

...

*Yiorgalla* is distinguishable, as the applicant's lawyer submits, in a situation where the child seeking recognition by its natural father learns his identity after its right has lapsed under the Law. In such a case, the lawyer asserts, the right is time-barred, as has happened in the case of the applicant.

We do not agree with this submission. In the statute of limitations on civil rights the starting point of the time-limit is not the litigant's knowledge of the particulars on the basis of which he will pursue his right, but the event which created the cause of action. And this is determined, in case of disagreement, by the court according to objective criteria. This principle was applied by the Commission of Human Rights in the case of *X. v. Sweden*."

13. The Supreme Court laid emphasis on the decision of the European Commission of Human Rights in the case of *X v. Sweden* (decision of 6 October 1982, no. 9707/82, Decisions and Reports 31, p. 223), in particular the following extract:

"In the opinion of the Commission it must generally be accepted in the interest of good administration of justice that there are time-limits within which prospective proceedings must be instituted. It must also be accepted that the time-limit is final and that there is no possibility to institute proceedings even when new facts have arisen after the expiry of the time-limit. This is also true for paternity proceedings. The Commission is furthermore of the opinion that a time-limit of three years from the child's birth as in the present case, is not an unreasonable time-limit for instituting paternity proceedings. Accordingly, the Commission finds that the fact that the applicant was not permitted to institute paternity proceedings does not disclose any appearance of a violation of Article 6 of the Convention taken alone."

14. The Supreme Court concluded that the provisions of sections 22(3) and 25(1) of the Children Law not only did not conflict with the provisions of Articles 15 and 30 of the Constitution but, on the contrary, were in line with the jurisprudence and reasoning which the Court has adopted in the operation and application of the corresponding Convention Articles. In this regard, the Supreme Court held as follows:

"We also note that the entirety of the provisions of Articles 15 and 30 which have occupied our attention create not only rights but also obligations. Article 30 does not operate only on behalf of the person resorting to the court but also on behalf of those who are being sued. All the interested parties before the court have the right to a fair trial in accordance with paragraph 2 of the Article, and the right to present their case, adduce evidence and examine witnesses, as provided for in paragraph 3 of the same Article. The right of protection of private and family life is provided for in paragraph 1 of Article 15; in accordance with paragraph 2, however, interference with that right

in accordance with the law is permitted for the protection of the rights and freedoms which the Constitution guarantees to any other person. The principle of proportionality and balance of the rights is also based on the spirit and letter of those provisions, as is discussed in the passages we have cited above.

In the particular question before us, it should not be overlooked that in the period which will have elapsed between the birth of the child born out of wedlock and the submitting of the application for paternal recognition, the putative father could have created his own family. The submitting of an application for paternal recognition and indeed when the putative father is advanced in age will without doubt cause upheaval in his family life. Therefore the recognition of the right to submit an application without time-limits may, on the one hand, have as a consequence the creation of a family for the child but, on the other, lead also to the break-up of another family, the family of the putative father. It is for this reason that the principle of proportionality must play the decisive role. Its correct and commensurate application dictates that the exercise of the relevant right be time-barred after a reasonable time has elapsed since the child's birth."

15. Lastly, in view of the interesting and novel legal matter raised before it, the Supreme Court did not make an order for costs.

16. However, a minority of the Supreme Court judges dissented (Judges Pikis, Nikitas, Konstandinides, Nicolaou and Hadjihambis). The minority found that section 22(3) of the Children Law was contrary to and incompatible with the provisions of Articles 15 § 1 and 30 §§ 1 and 2 of the Constitution since it extinguished the exercise of the family right to recognition of paternity. They therefore considered that the application could not be considered time-barred.

17. The minority, following the Supreme Court's judgment in *Yiorgalla v. Hadjichristodoulou* ((2000) 1 A.A.D. 2060), considered that the setting of a time-limit for the exercise of the civil right to recognition of paternity was acceptable provided that it was not oppressive and left a reasonable margin for the exercise of the right. The creation of an institution for the incorporation into the family of a child born out of wedlock was an obligation of the State that was imposed by both Article 15 of the Constitution and Article 8 § 1 of the Convention.

18. They further observed that it was indisputable that the right of recognition of paternity constituted an integral aspect of the family life of the individual which Article 15 § 1 of the Constitution safeguarded. It was equally certain in their view that the exercise of this right by the child might be subject to reasonable time-limits. The crucial question was whether a time-limit for the exercise of the right could be set irrespective of the knowledge of the facts that constituted the right or even the possibility, viewed objectively, of the holder of the right acquiring knowledge of that right.

19. The minority also examined the Limitation Law, Cap. 15, and in this context stated the following:

“In civil law the setting of time-limits is related, as a rule, to the moment the cause of action arises. The Limitation Law, Cap. 15, provides for this. ...

This principle is subject to two categories of exceptions, namely:

the impossibility of exercise of the right by persons affected by an impediment – minority (under the age of 18), mental disturbance, prohibition from administering the individual's affairs or absence from the country; and

the action is for relief from the consequences of a mistake.

In both cases the time-period for the exercise of the right is suspended for as long as the ignorance or impediment exists. The spirit by which the Limitation Law is inspired is that the ignorance of or the impossibility of defending rights suspends, within the framework we have explained, the time-limits.

The subject of paternity belongs to established civil rights which touch on the existence of the individual. The recognition of paternity takes effect against all and marks the framework of the family of the individual (see *Nicolaides v. Yerolemi* ((1984) 1 C.L.R. 742).

The question in the present case is whether the right which the person concerned is ignorant of – and, objectively, could not have ascertained – can lapse before it comes to the knowledge of the person entitled to exercise it. The right under discussion is protected as a fundamental human right by the Constitution. The question arises whether the extinction of the right, independently of the knowledge or the possibility of acquiring knowledge of its existence, is compatible with the respect for the right to family life, which Article 15 § 1 of the Constitution safeguards and of the right of recourse to court, which Article 30 §§ 1 and 2 of the Constitution safeguard. Taking the question further: is elimination ever possible of a fundamental right, the existence of which the person concerned does not know and about which he does not have the means of being informed?”

20. The minority considered that the decision of the Commission of Human Rights in *X. v. Sweden* (cited above) did not touch directly on the matter before them, which revolved round respect for the right to family life. They did, however, find that it indirectly shed some light on the point in issue to the extent that it maintained that the separate regulation of the claim by the child for recognition of paternity was a right of a peculiar character which was connected to the particularities of the quest for paternity by the child itself. The Court's judgment in the case of *Kroon and Others v. The Netherlands* (judgment of 27 October 1994, Series A no 297-C, p. 43), in which it was held that the limitations imposed by Dutch law on the recognition of paternity constituted a violation of the right to family life, was directly relevant to the facts of the applicant's case.

21. The minority finally underlined that:

“The facts which relate to the paternity of a child relate to the time before its birth, in reality to the time which relates to its conception. Objectively, the child does not know, nor has it the means of discovering the facts surrounding its conception. The only persons who have authentic knowledge of these facts are the parents, each of



them, primarily the mother. Chance knowledge, to the extent that the possibility of the paternity of a child is thought likely, may be acquired by third persons to the extent that the facts concerning the paternity of a child are rumoured, without it ever being certain that such possibility will come to the knowledge of the person affected. The setting of a time-limit for the exercise of the right to recognition of paternity, regardless and independent of the knowledge of facts that constitute it, reduces the right to the point of extinction. The core of the right to family life is violated and the right provided becomes only a right by law, and does not obtain respect.”

22. Following the Supreme Court's judgment, the applicant withdrew her application before the Family Court on 3 April 2002.

23. The applicant's putative biological father died on an unspecified date in 2004.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. The Constitution

#### *1. The right to respect for private and family life*

24. Article 15 of the Constitution provides:

“1. Every person has the right to respect for his private and family life.

2. There shall be no interference with the exercise of this right except such as is in accordance with the law and is necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the rights and liberties guaranteed by this Constitution to any person.”

#### *2. The right to equality and prohibition of discrimination*

25. Article 28 §§ 1 and 2 provide:

“1. All persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby.

2. Every person shall enjoy all the rights and liberties provided for in this Constitution without any direct or indirect discrimination against any person on the ground of his community, race, religion, language, sex, political or other convictions, national or social descent, birth, colour, wealth, social class, or on any ground whatsoever, unless there is express provision to the contrary in this Constitution.”

#### *3. The right of access to court*

26. Article 30 §§ 1 and 2 provide:

“1. No person shall be denied access to the court assigned to him by or under this Constitution. The establishment of judicial committees or exceptional courts under any name whatsoever is prohibited.

2. In the determination of his civil rights and obligations or of any criminal charge against him, every person is entitled to a fair and public hearing within a reasonable time by an independent, impartial and competent court established by law ... .”

#### *4. Referral of questions of constitutionality to the Supreme Court*

27. Article 144 reads as follows:

“1. A party to any judicial proceedings, including proceedings on appeal, may, at any stage thereof, raise the question of the unconstitutionality of any law or decision or any provision thereof material for the determination of any matter at issue in such proceedings and thereupon the Court before which such question is raised shall reserve the question for the decision of the Supreme Constitutional Court and stay further proceedings until such question is determined by the Supreme Constitutional Court.

2. The Supreme Constitutional Court, on a question so reserved, shall, after hearing the parties, consider and determine the question so reserved and transmit its decision to the court by which such question has been reserved.

3. Any decision of the Supreme Constitutional Court under paragraph 2 of this Article shall be binding on the court by which the question has been reserved and on the parties to the proceedings and shall, in case such decision is to the effect that the law or decision or any provision thereof is unconstitutional, operate as to make such law or decision inapplicable to such proceedings only.”

### **B. The Children (Relatives and Legal Status) Law 1991 (Law no. 187/91, as amended)**

#### *1. Limitations on challenging paternity*

##### **Section 11(1)(a)**

“Challenging paternity is excluded:

(a) for the husband of the mother, when one year has passed since the date he was informed of the child's birth and the circumstances from which it emerges that the mother did not conceive by him, and, in every case five years after the birth... .”

## 2. *Voluntary and judicial recognition of paternity of a child born out of wedlock*

### **Section 13**

(1) “A child that is born out of wedlock acquires retrospectively after its birth the legal status and the rights of a child born in wedlock as against its parents and their relatives if the parents subsequently marry and the child had been recognised or after the marriage the child is recognised voluntarily or by judicial decision as the child of the husband.

(2) The voluntary recognition as provided in paragraph (1) may be challenged on the grounds that the husband of the mother is not the father in accordance with the provisions of section 18.”

### **Section 15**

“The paternal recognition of a child who is born out of wedlock is effected by

- (a) voluntary recognition or
- (b) recognition by judicial decision.”

### **Section 16**

(1) “The father can recognise a child born out of wedlock as his own provided that the mother consents to this.

(2) If the mother has died or does not have the capacity to enter legal relations, the recognition is effected by the sole declaration of the father.

(3) If the father has died or does not have the capacity to enter into legal relations, the recognition may be given by the paternal grandfather or grandmother.

(4) If the child has died the recognition takes effect for the benefit of its descendants.”

### **Section 17(5)**

“If the consent of the mother is given in accordance with the provisions of this section, the recognition is considered to have been carried out and the appropriate changes are made in the official registers.”

### **Section 20**

(1) “The mother has the right to apply to the court for recognition of the paternity of her child that was born out of wedlock with its father”.

(2) The child also has the right referred to in paragraph (1) above.

(3) If the mother refuses her consent as provided for by paragraph (1) of section 16, the father also has the right to apply for recognition by judicial decision and in the case of paragraph (3) of section 16 that right vests in the paternal grandfather and grandmother.”

### **Section 21**

“(1) The application of the mother for recognition by judicial decision is brought against the father or his heirs.

(2) The application of the child for recognition by judicial decision is brought against the parent who has not proceeded with the necessary declaration for voluntary recognition or his heirs.

(3) The application of the father or of his parents for recognition by judicial decision is brought against the mother or her heirs.”

### *3. Limitation periods and extinction of the right to judicial recognition*

28. Section 22 sets maximum time-limits after which it is not legally permissible for the mother, child or father, as the case may be, to seek judicial recognition of paternity. Unless exercised within the periods of limitation specified in the section, the legal right to seek judicial recognition lapses.

### **Section 22**

“(1) The right of the mother to seek recognition by judicial decision of the paternity of her child shall lapse five years after the child's birth.

(2) If the mother was married at the crucial period of the child's conception, her right to ask for recognition by judicial decision of the paternity of her child by the biological father shall lapse five years after the day when the decision upholding the challenge to paternity in accordance with the provisions of section 8 becomes final.

(3) The right of the child to seek its recognition by judicial decision shall lapse three years after it has attained its majority.

(4) The right of the father or of his parents to seek recognition by judicial decision shall lapse three years after the mother has refused to give her consent to voluntary recognition.

(5) In the case of section 13 the right to recognition by judicial decision shall not lapse.”

#### *4. Effects of recognition of paternity*

##### **Section 23**

“In the case of voluntary recognition or recognition by judicial decision the child acquires from its birth the legal status and the rights of a child born in wedlock as against both its parents and their relatives.”

#### *5. Computation of limitation periods – transitional provision*

29. By virtue of section 25(1), in the case of applications for judicial recognition of paternity where majority has been attained before the Law entered into force, the three-year limitation period is set in motion on the date of entry into force of the Law, that is, 1 November 1991, and not on the earlier date of attaining majority as referred to in section 22(3):

##### **Section 25(1)**

“In cases where reference is made in this Law to time-limits within which a person may exercise his rights or take the measures provided for in this Law, these time-limits shall begin to run from the date when this Law came into effect.”

30. Therefore, the limitation period provided for in section 22(3) is not retroactively applied.

### **C. The Parent-Child Relations Law((Law no. 216/90, as amended)**

31. The relevant provisions of Law 216/90 on parent-child relations provide:

##### **Section 5(1)(a) and (b)**

“(a) The care of a child who is a minor (“parental care”) is the duty and right of the parents, who shall exercise it jointly.

(b) Parental care includes the determination of a name, the supervision of the person, the administration of the property and the representation of the child in each matter or legal transaction which relate to its person or property.”

##### **Section 33(1) and (2)**

“(1) The parents have the obligation to maintain jointly their child who is a minor, each according to his capabilities.

(2) By a decision and relevant arrangement by the court, the obligation of the parents by virtue of paragraph (1) may continue after the child attains its majority in cases where special circumstances demand this, such as in cases of incapacity or disability of the child or service in the National Guard or study at an educational institution or professional training school.”

#### **D. Case-law**

32. In the case of *Yiorgalla v. Hadjichristodoulou* (cited above) the Supreme Court, sitting as a full bench, examined the constitutionality of the one-year limitation period set by section 11(1)(a) of the Children Law in respect of applications contesting paternity. Under this provision, the limitation period starts to run from the time the mother's husband is informed of the birth and the circumstances from which the conception of the child resulted. The question whether this time bar was in line with Articles 15 and 30 § 1 of the Constitution was referred to the Supreme Court by the Family Court.

33. The Supreme Court held that the protection of family life, which was safeguarded as a fundamental right by Article 15 § 1 of the Constitution and, in parallel, by Article 1 of the Convention, also extended to the procedural means which were provided for the constitution of the family and the relations between its members. Rights interwoven with family life were “civil rights” within the meaning of Article 30 of the Constitution and Article 6 § 1 of the Convention. Article 30 § 1 of the Constitution secured access to court for the exercise of civil rights. The setting of a time-limit for the exercise of civil rights was acceptable provided that the restriction which was set was not oppressive and left a reasonable margin for the exercise of the right. Furthermore, the time-limit had to correlate with the purpose which it aimed to serve. An objective purpose of time-limits was the securing of certainty as regards the rights of the individual. The repudiation of paternity was by nature a civil right, the exercise of which could be subject to time-limits. The creation of an institution for the incorporation into the family of a child born out of wedlock was an obligation imposed by Article 8 § 1 of the Convention on the State.

34. The Supreme Court noted that since the father had had knowledge of the material facts concerning the presumption of paternity from the day of the child's birth, the time-limit of one year was sufficiently long for the purposes of seeking judicial determination of his rights.

35. Accordingly, the Supreme Court held that the time-limit was in conformity with the Constitution.

### **THE LAW**

#### **III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION**

36. The applicant complained under Article 8 of the Convention that the statutory three-year limitation period had prevented her from instituting

proceedings for the judicial recognition of paternity. The aforementioned provision provides as follows, in so far as relevant:

#### **Article 8**

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

#### **A. The parties' submissions**

##### *1. The Government*

37. The Government first submitted that when the applicant had lodged her application with the Family Court for judicial recognition of paternity, her claim had been time-barred since 1 November 1994. By virtue of section 25(1) of the Children Law, the three-year limitation period had begun to run from 1 November 1991, that is, the date the above Law entered into force, since the applicant had attained the age of majority before that date. The Law afforded claimants, such as the applicant, who had not found out their father's identity before attaining majority, a three-year period during which they could take steps to discover their father's identity and institute proceedings in that respect. The purpose of the Law was to ensure that children attaining majority before it entered into force were on the same footing as children attaining majority after its entry into force with regard to the right to seek judicial recognition of paternity. However, the applicant had claimed in the domestic proceedings that she had first acquired knowledge of the identity of her father in December 1997 after her right had become time-barred.

38. The Government argued that the setting of the limitation period for the child at three years from attaining majority was reasonable. They noted that by virtue of the Parents and Children Relations Law 1990 (Law no. 216/90, as amended), parental care was a right and duty of both parents. In the case of children born out of wedlock the mother took on parental care and, in the event that the child was recognised, it was also taken on by the father. Parental care under the Law included the administration by the parent of the child's property, representation of the child by the parent and child maintenance. Since a child could not institute legal proceedings before attaining its majority, the Children Law provided for the mother to institute

judicial paternity proceedings within five years from the birth of the child (section 22(1) - see paragraph 28 above). If, however, for any reason the mother did not do so, the child was afforded its own separate right to seek judicial recognition upon attaining the age of majority, provided that it did so before reaching the age of twenty-one. Thus, the child had three years during which it had the opportunity to make enquiries and take any necessary steps to ascertain and gain information as to its father's identity.

39. The Government emphasised that the three-year limitation period served several important purposes. Firstly, it intended to provide finality and legal certainty and to prevent stale claims from coming to court. A period of twenty-one years from the date of birth constituted a substantial amount of time bearing in mind that the courts would have to examine material events and evidence directly concerning the issue of paternity, which would go back to the child's birth. The limitation period thus served to prevent injustice that could arise if courts had to decide upon events that had taken place in the past based on evidence that might have become unreliable and incomplete due to the passage of time (here the Government relied on *Stubbings and Others v. the United Kingdom*, judgment of 22 October 1996, *Reports of Judgments and Decisions* 1996-IV, pp. 1502-03, § 51, and *X v. Sweden*, cited above). Furthermore, the Government noted that the time bar pursued the legitimate aim of protecting defendants from claims that could be vexatious and unfounded. Amongst other things, it prevented fabrication of the date on which knowledge of the father's identity had allegedly been acquired but also as to facts instrumental to the substance of the case. The Government noted that the time-limit ensured that the putative father's rights and obligations and those of his family and heirs did not remain undetermined *ad infinitum* and were protected. At the same time, the existence of the limitation period encouraged claimants to pursue their rights diligently and avoid the uncertainty and absence of finality that would ensue as to the rights and obligations of third parties.

40. In the light of the above, the Government maintained that the three-year limitation period running from the age of majority, or in cases such as the instant one, from the date of entry into force of the Law, did not contravene Article 8 of the Convention. They considered that the time bar pursued a legitimate aim and that a balance had been struck between the aim sought to be achieved and the means employed for achieving it, in line with the principle of proportionality. Furthermore, the Government accepted that they had an obligation under that provision to enable the applicant to determine her paternity and thus her identity. By granting the applicant the right to institute judicial proceedings for recognition of paternity the State had fulfilled this obligation. The applicant, however, was in fact claiming that the Government should afford her the right to institute paternity proceedings at any time. In the Government's opinion, Article 8 imposed no



such obligation on States. In conformity with the principle of proportionality, a fair balance had to be struck between securing the applicant's right to have her personal identity determined and ensuring that the freedoms of others were protected. The time-limit set by the Children Law satisfied the above requirements and did not violate the applicant's right guaranteed by this provision.

41. The Government stressed that in the instant case the applicant had in reality had the opportunity to take steps to discover her father's identity from 1963 when she had reached the age of majority. Furthermore, she had been afforded an additional three years from 1 November 1991 through the transitional provisions of the Children Law. Accordingly, the fact that she could no longer exercise her right was not attributable to the provisions of the Law as such, which had given her ample time in this respect, but to her own inertia in failing to take steps that could have led her to discover her father's identity before her right lapsed.

## *2. The applicant*

42. The applicant contested the Government's arguments that she had deliberately acted or omitted to bring paternity proceedings within the prescribed time-limit. The applicant argued that she could not be blamed for the fact that she had been given the chance to identify her father only at the age of fifty-two. She had been deprived of her right to seek judicial recognition of paternity. In her opinion, the Law in question was disproportionate since her above right had been extinguished before it had been created. Hence, she submitted that there had been a violation of her rights under Article 8 of the Convention.

## **B. The Court's assessment**

### *1. Applicability of Article 8 of the Convention*

43. It is not disputed between the parties that Article 8 is applicable.

44. In this connection the Court notes that the applicant, a child born out of wedlock, sought by means of judicial proceedings to determine her legal relationship with the person she claimed was her father, through the establishment of the biological truth.

45. The Court reiterates that birth, and in particular the circumstances in which a child is born, forms part of a child's, and subsequently the adult's, private life guaranteed by Article 8 of the Convention (see *Odièvre v. France* [GC], no. 42326/98, § 29, ECHR 2003-III). Respect for private life requires that everyone should be able to establish details of their identity as individual human beings and that an individual's entitlement to such information is of importance because of its formative implications for

his or her personality (see, for example, *Mikulić v. Croatia*, no. 53176/99, §§ 53-54, ECHR 2002-I, and *Gaskin v. the United Kingdom*, judgment of 7 July 1989, Series A no. 160, p. 16, §§ 36-37, 39). This includes obtaining information necessary to discover the truth concerning important aspects of one's personal identity, such as the identity of one's parents (see *Jäggi v. Switzerland*, no. 58757/00, § 25, ECHR 2006-...; *Odièvre*, § 29; and *Mikulić*, §§ 54 and 64; both cited above).

46. Accordingly, the facts of the case fall within the ambit of Article 8 of the Convention.

## 2. Compliance with Article 8

47. The Court reiterates that the essential object of Article 8 is to protect the individual against arbitrary action by public authorities. There may in addition be positive obligations inherent in ensuring effective “respect” for private or family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves (see *Kroon*, cited above, § 31, and *Mikulić*, cited above, § 57). However, the boundaries between the State's positive and negative obligations under this provision do not lend themselves to precise definition. The applicable principles are nonetheless similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation (see *Keegan v. Ireland*, judgment of 26 May 1994, Series A no. 290, p. 19, § 49, and *Kroon*, cited above).

48. The Court reiterates that its task is not to substitute itself for the competent domestic authorities in regulating paternity disputes at the national level, but rather to review under the Convention the decisions that those authorities have taken in the exercise of their power of appreciation (see, *inter alia*, *Róžański v. Poland*, no. 55339/00, § 62, 18 May 2006; *Mikulić*, cited above, § 59, and *Hokkanen v. Finland*, judgment of 23 September 1994, Series A no. 299-A, p. 20, § 55). The Court will therefore examine whether the respondent State, in handling the applicant's action for judicial recognition of paternity, has complied with its positive obligations under Article 8 of the Convention.

49. At the outset, the Court observes that the applicant did not dispute that the impossibility of bringing an action for judicial recognition of paternity was “in accordance with the law”. Indeed, she complained that the time-limit imposed by the Children Law (see paragraphs 28-30 above) prevented her from having the possibility of obtaining judicial recognition of paternity before the domestic courts in violation of Article 8 of the Convention.

50. In this connection it can be observed that the Children Law introduced the right of a child to institute proceedings for judicial

recognition of paternity in the domestic legal system in 1991. This right is subject to a three-year time-limit which starts to run from the moment the child reaches the age of majority (see paragraph 28 above). However, for persons such as the applicant, who have attained their majority before the date the above Law came into force, that is, 1 November 1991, the time-limit commences on that date (see paragraph 29 above). Thus, in the instant case the applicant had until 1 November 1994 to institute paternity proceedings. The applicant, however, instituted such proceedings subsequent to the expiration of the time-limit as she claimed that she had not found out her father's identity until December 1997. Her application was then found to be time-barred (see paragraphs 12-14 above).

51. The Court has previously accepted that the introduction of a time-limit for the institution of paternity proceedings was justified by the desire to ensure legal certainty and finality in family relations (see, for example, *Mizzi v. Malta* (no. 26111/02, § 88, ECHR 2006-... (extracts), and *Rasmussen v. Denmark*, judgment of 28 November 1984, Series A no. 87, p. 15, § 41). Furthermore, as submitted by the Government (see paragraph 40 above), the time-limit imposed by the Children Law for actions concerning recognition of paternity intends to protect the interests of presumed fathers from stale claims and prevent possible injustice if courts were required to make findings of fact that went back many years (see, *inter alia*, *Mizzi*, cited above, § 83; *Shofman v. Russia*, no. 74826/01, § 39, 24 November 2005; and, *mutatis mutandis*, *Stubbings*, cited above, § 51).

52. Accordingly, the existence of a limitation period *per se* is not incompatible with the Convention. What the Court needs to ascertain in a given case is whether the nature of the time-limit in question and/or the manner in which it is applied is compatible with the Convention.

53. When deciding whether or not there has been compliance with Article 8 of the Convention, the Court must determine whether on the facts of the case a fair balance was struck by the State between the competing rights and interests at stake (see paragraph 47 above). Apart from weighing the interests of the individual *vis-à-vis* the general interest of the community as a whole, a balancing exercise is also required with regard to competing private interests. In this connection, it should be observed that the expression “everyone” in Article 8 of the Convention applies to both the child and the presumed father. On the one hand, people have a right to know their origins, that right being derived from a wide interpretation of the scope of the notion of private life (see *Odièvre*, cited above, § 42). Persons in the applicant's situation have a vital interest, protected by the Convention, in receiving the information necessary to uncover the truth about an important aspect of their personal identity and eliminate any uncertainty in this respect (see *Mikulić*, cited above, §§ 64 and 65). On the other hand, as stated above, a presumed father's interest in being protected from stale claims concerning facts that go back many years cannot be denied (see paragraph 51 above).

Finally, in addition to that conflict of interest, other interests may come into play, such as those of third parties, essentially the presumed father's family.

54. While performing the “balancing of interests test” in the examination of cases concerning limitations on the institution of paternity claims, the Court has taken a number of factors into consideration. For instance, the particular point in time when an applicant becomes aware of the biological reality is pertinent, that is, the Court will examine whether the circumstances substantiating a particular paternity claim are met before or after the expiry of the applicable time-limit (see, for instance, the cases of *Shofman*, §§ 40 and 43, and *Mizzi*, §§ 109-11, concerning disavowal of paternity claims; both cited above). Furthermore, the Court looks into whether or not an alternative means of redress exists in the event the proceedings in question are time-barred. This would include for example the availability of effective domestic remedies to obtain the reopening of the time-limit (see, for example, *Mizzi*, cited above, § 111) or exceptions to the application of a time-limit in situations where a person becomes aware of the biological reality after the time-limit has expired (see *Shofman*, cited above, § 43).

55. The yardstick against which the above factors are measured is whether a legal presumption has been allowed to prevail over biological and social reality and if so whether, in the circumstances, this is compatible, having regard to the margin of appreciation left to the State, with the obligation to secure effective “respect” for private and family life, taking into account the established facts and the wishes of those concerned (see *Kroon*, cited above, § 40).

56. For example, the Court has found that rigid limitation periods or other obstacles to actions contesting paternity that apply irrespective of a putative father's awareness of the circumstances casting doubt on his paternity, without allowing for any exceptions, violated Article 8 of the Convention (see, *Shofman*, cited above, §§ 43-45; see also, *mutatis mutandis*, *Mizzi*, cited above, §§ 80 and 111-13; *Paulík v. Slovakia*, no. 10699/05, §§ 45-47, ECHR 2006-... (extracts); and *Tavlı v. Turkey*, no. 11449/02, §§ 34-38, 9 November 2006).

57. In connection with the above, the Court further reiterates that the choice of the means calculated to secure compliance with Article 8 in the sphere of the relations of individuals between themselves is in principle a matter that falls within the Contracting States' margin of appreciation. In this connection, there are different ways of ensuring “respect for private life”, and the nature of the State's obligation will depend on the particular aspect of private life that is at issue (see *Odièvre*, cited above, § 46, and *X and Y v. the Netherlands*, judgment of 26 March 1985, Series A no. 91, p. 12, § 24).

58. A comparative examination of the Contracting States' legislation on the institution of actions for judicial recognition of paternity reveals that

there is no uniform approach in this field. Unlike proceedings by fathers for the establishment or denial of paternity (see *Shofman*, cited above, § 37), a significant number of States do not set a limitation period for children to bring an action aiming to have paternity established. Indeed, a tendency can be ascertained towards a greater protection of the right of the child to have its paternal affiliation established.

59. In the States in which a limitation period for bringing such proceedings exists, the length of the applicable periods varies significantly, the time-limit varying between one and thirty years. Furthermore, although there is a difference in the *dies a quo* of the limitations periods, in the majority of these States the relevant period is calculated from either the majority of the child, the birth, or the existence of a final judgment denying paternity irrespective of the child's awareness of the facts surrounding its paternal affiliation and without providing any exceptions. Only a small number of legal systems seem to have produced solutions to the problem which arises when the relevant circumstances become known only after the expiry of the time-limit, for instance, by providing for the possibility of bringing an action after the time-limit has expired if there was a material or moral impossibility of lodging it within that period or if there were good reasons for the delay.

60. In the present case the applicant claimed before the domestic courts that she did not know who her biological father was until her mother's death in 1997 by which time the statutory time-limit had already expired. This has not been disputed by the Government who maintained that the applicant failed to take steps that could have led her to discover her father's identity within the time afforded to her before her right lapsed (see paragraph 41 above).

61. The Court notes that the provisions of the Children Law adequately secure the interests of a child who learns about his father's identity within the period provided for by the Law. They do not however make any allowance for children in the applicant's situation who did not acquire knowledge of the material facts pertaining to paternity until after the three-year period had elapsed.

62. The Court has difficulties in accepting the inflexible limitation period with time running irrespective of a child's awareness of the circumstances surrounding its father's identity and without providing any exceptions to the application of that period (see, *mutatis mutandis*, *Shofman*, cited above, § 43). The main problem therefore is the absolute nature of the time-limit rather than its *dies a quo* as such. In view of the fact that in the present case the presumed father denied paternity, judicial proceedings before the Family Court were the only avenue by which the applicant could establish whether or not he was her biological father. As a result of this rigid time-limit, as upheld by the Supreme Court, the applicant was deprived of the possibility of obtaining judicial determination of paternity. She was

deprived of this right even though she was in a situation where she had not had any realistic opportunity to go to court at any earlier stage.

63. In the Court's view, a distinction should be made between cases in which an applicant has no opportunity to obtain knowledge of the facts and, cases where an applicant knows with certainty or has grounds for assuming who his or her father is but for reasons unconnected with the law takes no steps to institute proceedings within the statutory time-limit (see, *mutatis mutandis*, *Yildirim v. Austria* (dec.), no. 34308/96, 19 October 1999, and *Rasmussen v. Denmark*, cited above, p. 7, §§ 8 and 10). Furthermore, the case of *Stubbings* (cited above) relied on by the Government can be distinguished from the present case in view of the nature of the claim in that case and the availability of an alternative procedure (§§ 65-66). Moreover, although the present case differs from the situation examined by the Court in *Kroon* (cited above) given that in the latter case the parents were in agreement about the paternity, while in the present case the presumed father contested the applicant's paternity claim, as in *Kroon*, the family relationship at stake in the instant case is regulated by an irrefutable presumption in the form of a time-limit with no consideration of the material facts and the social reality surrounding such situations, in particular the difficulties faced by a child in acquiring knowledge of the facts surrounding its conception. Finally, in reply to the Government's argument concerning the prevention of fabricated claims (see paragraph 39 above), the Court considers that the genuineness of a paternity claim in any given case is a matter to be decided by the trial court when examining the claim.

64. It is clear from the Supreme Court's judgment that the general interest as well as the competing rights and interests both of the presumed father and his family were accorded greater weight than the applicant's right to find out her origins (see paragraph 14 above). The Court, however, does not consider that such a radical restriction of the applicant's right to institute proceedings for the judicial determination of paternity was proportionate to the legitimate aim pursued. In particular, it has not been shown how the general interest in protecting legal certainty of family relationships or the interest of the presumed father and his family outweighed the applicant's right to have at least one opportunity to seek judicial determination of paternity. In this connection the Court reiterates that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective (see *Airey v. Ireland*, judgment of 9 October 1979, Series A no. 32, p. 12-13, § 24).

65. Hence, even having regard to the margin of appreciation left to the State, the Court considers that the application of a rigid time-limit for the exercise of paternity proceedings, regardless of the circumstances of an individual case and, in particular, the knowledge of the facts concerning paternity, impairs the very essence of the right to respect for one's private life under Article 8 of the Convention.

66. In view of the above, and in particular having regard to the absolute nature of the limitation period, the Court considers that a fair balance has not been struck between the different interests involved and, therefore, that the interference with the applicant's right to respect for her private life was not proportionate to the legitimate aims pursued.

67. Accordingly, the Court finds that there has been a violation of Article 8.

#### IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

68. The applicant complained under Article 6 Convention that she had been barred from instituting paternity proceedings due to the statutory three-year limitation period. The aforementioned provision provides as follows, in so far as relevant:

##### **Article 6 § 1**

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing ... by [a] ... tribunal...”

#### **A. The parties' submissions**

##### *1. The Government*

69. The Government repeated the same arguments as those advanced with regard to Article 8 of the Convention (see paragraphs 37-41 above). In addition, the Government relied on the Commission's decision in the case of *X. v. Sweden* (cited above) and the Court's judgment in the case of *Stubbings* (cited above). They contended that the three-year limitation period commencing from the date of entry into force of the Law, rather than the date of acquiring knowledge of the father's identity after attaining majority, did not restrict or reduce the applicant's access to court in such a way or to such an extent as to impair the essence of her right.

##### *2. The applicant*

70. The applicant submitted the same arguments as those advanced with regard to Article 8 of the Convention (see paragraph 42 above).

#### **B. The Court's assessment**

71. In view of the grounds on which it has found a violation of Article 8 of the Convention (see paragraphs 61-67 above), the Court considers that no separate issue arises under this provision.

## V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

### A. Damage

73. The applicant submitted that she had suffered both pecuniary and non-pecuniary damage but did not claim a specific sum in this respect. With regard to pecuniary damage she submitted that as a result of the violation of her Convention rights she had been deprived of her inheritance rights to her father's estate. In this connection, she noted that she could submit evidence concerning her father's estate. Furthermore, she argued that the denial of her rights to seek judicial recognition of paternity had caused her suffering and distress.

74. The Government contested these claims. In particular, they submitted that the applicant's claims as to pecuniary damage were speculative since it could not be said that she would have been able to prove her paternity claim. As regards the applicant's claim in respect of non-pecuniary damage, the Government were of the opinion that the finding of a violation would constitute in itself sufficient just satisfaction.

75. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. It notes in this respect that her claim under this head is purely speculative as it is based on the assumption that she would have been successful in the paternity proceedings if they had not been time-barred. The Court therefore rejects this claim. However, it considers that the applicant must have suffered feelings of frustration and distress which cannot be compensated solely by the finding of a violation. Making an assessment on an equitable basis, as required by Article 41, the Court awards the applicant EUR 6,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount.

### B. Costs and expenses

76. The applicant claimed 1,437.50 Cyprus pounds (CYP) for the costs and expenses incurred before the domestic courts. This sum included CYP



500 for the proceedings before the Family Court, CYP 750 for those before the Supreme Court and CYP 187.50 in VAT at a rate of 15 % on the above amounts. She provided the Court with an invoice in this respect. The applicant, who received legal aid from the Council of Europe for her representation in the present case for the proceedings before the Court, did not seek reimbursement of the relevant costs.

77. The Government contested the applicant's claim for costs and expenses incurred before the domestic courts. In this respect, they submitted that the applicant had not furnished evidence of the legal costs actually incurred and of their amount. They considered that the invoice was not sufficient in this respect.

78. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). This may include domestic legal costs actually and necessarily incurred to prevent or redress the breach of the Convention (see, for example, *I.J.L. and Others v. the United Kingdom* (just satisfaction), nos. 29522/95, 30056/96 and 30574/96, § 18, 25 September 2001).

79. In the present case the Court observes that the invoice refers to a lump sum for each set of domestic proceedings, with no indication of the rate charged and the time spent by the lawyer or any details concerning in- and out-of-court expenses. Notwithstanding this, it is clear that the applicant did incur costs concerning the domestic proceedings. The Court considers, having regard to the nature of these proceedings, that the amount claimed is reasonable as to quantum. Accordingly, it awards the sum claimed in full.

### **C. Default interest**

80. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

## **FOR THESE REASONS, THE COURT UNANIMOUSLY**

1. *Holds* that there has been a violation of Article 8 of the Convention;
2. *Holds* that it is not necessary to examine separately the applicant's complaint under Article 6 § 1 of the Convention;
3. *Holds*

- (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount;
- (b) EUR 2,496.41 (two thousand four hundred and ninety-six euros and forty-one cents) in respect of costs and expenses;
- (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN  
Registrar

Nina VAJIĆ  
President