



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

FIFTH SECTION

CASE OF DOKTOROV v. BULGARIA

(Application no. 15074/08)

JUDGMENT

STRASBOURG

5 April 2018

FINAL

10/09/2018

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Doktorov v. Bulgaria,

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

Angelika Nußberger, *President*,

Erik Møse,

Yonko Grozev,

Síofra O'Leary,

Mārtiņš Mits,

Lətif Hüseyinov,

Lado Chanturia, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 13 March 2018,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 15074/08) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Bulgarian national, Mr Tsanko Todorov Doktorov (“the applicant”), on 18 February 2008.

2. The applicant was represented by Mr T. Valchev, a lawyer practising in Varna. The Bulgarian Government (“the Government”) were represented by their Agent, Ms R. Nikolova, of the Ministry of Justice.

3. The applicant alleged that it was impossible for him, both in law and in practice, to contest the paternity of a child born during his marriage to the child’s mother.

4. On 7 December 2016 this complaint was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1973 and lives in Varna.

6. The applicant and his wife divorced on 21 August 2006 pursuant to a court-approved agreement between the two of them. Under the terms of this agreement, the applicant undertook to pay child support to the two children

born during the marriage and agreed to his wife's keeping his family name after the divorce.

7. Subsequently, the applicant learned that his former wife had conceived their second child, born in 2003, as a result of a relationship with another man during her marriage to the applicant. The applicant underwent a DNA test to determine whether he was the father of the younger child. The DNA test – the result of which the applicant received on 15 January 2007 – established that he was not the biological father of the second child. The results of this DNA test were never considered by a court.

8. Shortly thereafter, in February 2007, the applicant brought a civil claim in court, seeking to contest his paternity of the child in question. On 1 March 2007 the Varna Regional Court dismissed his request, finding that it was time-barred due to the expiry – in 2004 – of the year-long limitation period counting from the child's birth or from learning thereof (see the section "Relevant domestic law and practice" below"). This finding was confirmed by two higher judicial instances, the final decision being pronounced by the Supreme Court of Cassation on 19 September 2007.

9. The applicant brought subsequent proceedings in which he sought to stop paying child support to the second child. On 20 May 2008 his claim was rejected by the Varna District Court, which found that it had not been proven that the applicant was not the child's father, given that he had not rebutted the legal presumption under Article 32 (1) of the Family Code 1985 ("the 1985 Code").

II. RELEVANT DOMESTIC LAW AND PRACTICE

10. The applicable law at the time was the 1985 Code. According to its Article 32 (1), the husband of a child's mother was considered to be the father of any child born during the marriage or before the expiry of three hundred days from its dissolution. According to its Article 33 (1), the husband of a child's mother could contest his paternity of the child by proving that the child could not have been fathered by him. Such a claim could be brought within a year of the date on which the father learned of the child's birth.

11. Article 303 (1) (7) of the Code of Civil Procedure 2007 (CCP 2007) provides that civil proceedings may be reopened when a judgment of the European Court of Human Rights has established that the Convention had been violated and where a fresh examination of the case is necessary in order to eliminate the consequences of the violation. The interested party may make the request for reopening no later than six months after the judgment has become final (Article 305 (2) of the CCP 2007). The request is examined by the Supreme Court of Cassation (Article 307 of the CCP 2007).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

12. The applicant complained that he was unable to contest his legal paternity of one of his children, despite a biological reality showing that he was not the father. He claimed this breached his rights under Article 8 of the Convention, which reads as follows:

“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.”

13. The Government contested that argument.

A. Admissibility

14. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' positions

15. The applicant submitted that by introducing the possibility to challenge in court a legal presumption of fatherhood, the Bulgarian legislator had recognised the personal right to the protection of private life of individuals who, like himself, were legally presumed to be fathers of children born during the former's marriage to the mothers. The applicant believed that this right had to be protected not only in theory but also in practice. He argued that by limiting, in law, the possibility of bringing a challenge to fatherhood to one year after the child's birth or the date of learning thereof, the legislator had deprived of protection any individuals who, like and including the applicant, happened to learn about the biological reality after the expiry of that one year period. Furthermore, by not examining the merits of his legal challenge to paternity, the courts' decisions represented an unjustified and disproportionate interference with his right to private life in breach of Article 8 of the Convention.

16. The Government submitted that, even if there had been an interference with the applicant's right to his private life, it had been based

on a law that was clear, accessible and whose consequences were wholly foreseeable. That law pursued the legitimate aim of ensuring the legal certainty of the origin and civil registration of individuals, together with the aim of protecting the rights of children, who were the most vulnerable persons in family relationships. The law provided legally presumed fathers with a procedural guarantee for the exercise of their right to private life by allowing them to challenge the legally established reality within one year from learning about the child's birth. The limitation in law of one year in which to bring such a challenge to paternity was a reasonable solution which accounted for the different interests involved by providing a fair balance between the need to establish biological reality and the need to protect the stability of already confirmed civil origin.

2. *The Court's assessment*

(a) **Applicability of Article 8 of the Convention**

17. In the instant case the applicant sought, by means of judicial proceedings, to rebut the legal presumption of his paternity on the basis of biological evidence. The purpose of those proceedings was to determine his legal relationship with his former wife's son, who was registered as his own, having been born during his marriage to the child's mother.

18. The Court has previously held that the determination of the father's legal relationship with his putative child pertained to his "private life" (see *Rasmussen v. Denmark*, 28 November 1984, § 33, Series A no. 87, and *R.L. and Others v. Denmark*, no. 52629/11, § 38, 7 March 2017). While under such circumstances an interference with "family life" might also occur, the matter undoubtedly concerned the applicant's "private life" (see *Yildirim v. Austria* (dec.), no. 34308/96, 19 October 1999). Accordingly, the facts of the present case fall within the ambit of Article 8.

(b) **General principles**

19. The Court reiterates that, whether the situations were to be examined from the perspective of positive or negative obligations on the part of the State, the applicable principles were similar. In both contexts consideration had to be given to the fair balance that needed to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoyed a certain margin of appreciation (see, among other authorities, *Róžański v. Poland*, no. 55339/00, § 61, 18 May 2006, and *Keegan v. Ireland*, judgment of 26 May 1994, Series A no. 290, § 49). The Court has clarified in this context that it cannot satisfactorily assess whether a fair balance was struck for the purposes of Article 8 § 2 without determining whether the decision-making process, seen as a whole, provided the applicant with the requisite protection of his interests (see *Sommerfeld v. Germany* [GC], no. 31871/96, § 66, ECHR 2003-VIII

(extracts) with further references, and *Krisztián Barnabás Tóth v. Hungary*, no. 48494/06, § 32, 12 February 2013).

20. In the context of applicants wishing to challenge the existing status quo as regards their relationship with a child, the Court has repeatedly found that limitations to the individual right to private life were justified by considerations of legal certainty in family relations. Furthermore, the Court has emphasised that consideration of what was in the best interests of the child concerned was of paramount importance in every case of this kind and that, depending on their nature and seriousness, the child's best interests might override those of the parents (see *Sommerfeld*, cited above, § 64, and *Görgülü v. Germany*, no. 74969/01, § 43, 26 February 2004).

(c) Application of these principles to the present case

21. The Court first notes that there is no dispute between the parties that the domestic courts' decision to dismiss the applicant's request for bringing proceedings to contest his paternity represented an interference with the applicant's Article 8 rights and that it was "in accordance with the law" (see paragraphs 8, 10 and 11 above).

22. As to whether it pursued a legitimate aim, the Court finds that the strict application of a year-long time-limit for the institution of such proceedings could be said to be justified by the objective of ensuring legal certainty as regards recognised parental affiliation and related support, and the general interest of society to see stability in civil relations and individuals' origin upheld (see, *mutatis mutandis*, *Mizzi v. Malta*, no. 26111/02, § 88, ECHR 2006-I (extracts); *Rasmussen*, cited above § 41, and *Shofman v. Russia*, no. 74826/01, § 39, 24 November 2009).

23. It remains to be established whether not accepting to hear such a claim for contesting paternity by reference to the applicable law was "necessary in a democratic society" or, in other words, whether the authorities struck a fair balance between the different interests involved.

24. The Court notes that the introduction of a general measure in the form of a legislative response designed to deal with a certain type of situation might be an appropriate means to ensure the fair balance referred to above (see paragraph 19 above). However, an excessively strict statutory limitation on an applicant's possibility to contest paternity – in the present case one year starting from the birth of the child rather than from the moment the applicant became aware that he might not be the father of the child – cannot be said to constitute a proportionate balancing of the competing interests involved. While the legislator's choice to limit that possibility in time could not be characterised as either irrational or arbitrary, the Court finds that it cannot be considered proportionate in view of the particular interests at stake and the rigidity with which it operated in all cases. In particular, it failed to provide for any procedure that would allow the consideration of the individual circumstances of persons who, like the

applicant, fell outside the legal limitation period for reasons which could not be imputed to them.

25. The Court observes in that connection 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 *Krisztián Barnabás Tóth*, cited above, § 32, and *A.L. v. Poland*, no. 28609/08, § 66, 18 February 2014). Accordingly, the Court finds that it is called upon to examine whether, in handling the applicant's claim contesting his paternity, the respondent State complied with the requirements of Article 8 of the Convention.

26. The Court reiterates that the State enjoyed a wider margin of appreciation in dealing with the applicant's claim, given that the latter ultimately concerned the child's legal status, as opposed to contact or information rights, where the Court's scrutiny has been tighter and the State's margin of appreciation smaller (see, similarly, *Kautzor v. Germany*, no. 23338/09, §§ 72 and 78, 22 March 2012; *Ahrens v. Germany*, no. 45071/09, § 70, 22 March 2012, and *A.L.*, cited above, § 68). As a part of that margin of appreciation, the national law in the present case provided legally presumed fathers with the possibility of challenging their paternity in court; however, this possibility was strictly limited in time to a year from the date of learning about the child's birth.

27. The Court notes that, at the time when the child in respect of whom the applicant wished to contest paternity was born, the applicant was married to the child's mother. As a result of this he was considered to be the child's father. He continued to live with the mother and the child as a family for about three years after the child's birth and before he and the mother divorced. Consequently, the applicant had established a parental relationship with the child in question, both in law and in practice and it was in the interest of the child to rely on the stability and continuity of this relationship, despite the subsequent divorce of his legal parents. When the applicant challenged his paternity, the domestic courts dismissed his claim, finding that it had been submitted after expiry of the time-limit under the law (see paragraph 8 above).

28. In an earlier case (see *Yildirim*, cited above), the Court found that "once the limitation period for the applicant's own claim to contest paternity had expired, greater weight was given to the interests of the child than to the applicant's interest in disproving his paternity". However, this finding was made against a background whereby the applicant had known that he was not the father from the first day of the child's life but – for reasons unconnected with the law – had taken no steps to contest paternity within the statutory time-limit (see for a similar approach *Shofman*, cited above, § 39).

29. The situation in the present case was different. It had only been brought to the applicant's attention that he was probably not the father of the child after his divorce from the child's mother. The applicant had obtained a DNA report and had attempted to institute judicial proceedings in that respect immediately thereafter, to no avail. The Court has previously found that the establishment of inflexible time limits is likely to run counter to the importance of the private life interest at stake (see *A.L.*, cited above, § 71). Thus, in several cases it has found a violation of Article 8 as a result of the impossibility, due to the application of strict time-limits running as from the birth of the child, to contest paternity where the applicants had learned about the circumstances supporting their claims – or had obtained relevant scientific evidence – only after the expiry of this time limit (see *Mizzi*, cited above, §§ 112–114, and *Tavli v. Turkey*, no. 11449/02, §§ 33–36, 9 November 2006).

30. In the present case, the applicant had acquired a piece of scientific evidence which demonstrated the likelihood of his not being the biological father of the child in question. However, his subsequent legal challenge to paternity was never examined on the merits; instead, it was dismissed as time-barred. The absolute strictness of the applicable time-limit meant that the probative force of that evidence was never tested, nor was the applicant given an opportunity to have his case heard in a domestic procedure capable of assessing the different interests involved and balancing them with reference to the primary consideration of the best interests of the child. In previous similar cases the Court has found the decision-making process problematic where there had been no examination by the national authorities of the personal circumstances of the applicants (see *Rózański*, cited above, § 77; *Anayo*, cited above, § 71; *Shofman*, cited above, § 43)

31. The situation in which the applicant found himself in the present case has to be distinguished from that of the applicants in a number of other cases who had sought to either contest or claim paternity on the basis of a biological reality at odds with established legal presumptions. In particular, in those cases the applicants' claims, or the claims brought in their interest, were rejected by the relevant national authorities after consideration of their factual circumstances and following a balancing exercise which, however succinct, accounted for the different interests involved paying particular attention to the needs of the child (see, in particular, *Krisztián Barnabás Tóth*, cited above, §§ 33–37, and *A.L.*, cited above, §§ 75–78). In other cases the Court has found that rejections of the applicants' paternity-related claims did not breach the required fair balance under Article 8 of the Convention because they had been based on considerations such as the child having the benefit of previously established origin, the need to preserve stability and continuity in the children's relationships where there was an established social reality in which they thrived, or the fact that granting such requests would not have been in the child's best interests for other reasons

(see *Kautzor*, cited above, § 77; *Ahrens*, cited above, § 74; *Marinis v. Greece*, no. 3004/10, § 77, 9 October 2014, and *Nylund v. Finland* (dec.), no. 27110/95, ECHR 1999-VI). In all these cases the Court noted that the father's inability to have his paternity claim examined on the merits was not absolute and that the domestic law envisaged situations in which such claims were allowed, for example when the legal presumption did not correspond to the established social and family reality. Importantly, the Court also considered relevant in those cases that the decision-making process comprised elements such as a detailed examination of the factual circumstances by the competent authorities, a consideration of the different interests involved, keeping in mind the higher interest of the child, and the question of whether the applicant had been given an opportunity to present his personal situation and position (see *L.D. and P.K. v. Bulgaria*, nos. 7949/11 and 45522/13, § 63 with further references, 8 December 2016).

32. In the present case, the applicant did not have the practical possibility of having his paternity challenge examined on the merits. Neither could he have resorted, for such did not exist in law, to preliminary proceedings, or an examination of a preliminary character, in which the courts could have considered the concrete circumstances of his situation and whether it was in the best interests of the child involved to allow an examination on the merits of the applicant's challenge to his paternity (contrast with *Krisztián Barnabás Tóth*, cited above, §§ 12–13, and *Ahrens*, cited above, § 77). The Court acknowledges that this situation is apparently the result of the legislator's objective to maintain stability in social relations through giving prevalence to already established legal origin (see, similarly, *Paulík v. Slovakia*, no. 10699/05, § 44, ECHR 2006-XI (extracts)). Although it accepts that this is a reasonable consideration, the Court finds that other elements need to be determined in situations like the present one, such as the particular circumstances of the case in issue and how those have affected each of the parties involved.

33. In view of the above, the Court finds that depriving the applicant of any and all possibility of having his case heard and his individual circumstances considered was not proportionate to the legitimate aims pursued. It follows that a fair balance has not been struck between the general interest of the protection of legal certainty in social relations and affiliation, the interests of the other parties and in particular the child, and the applicant's right to have the legal presumption of his paternity reviewed in the light of his particular circumstances (see, *mutatis mutandis*, *Mizzi*, cited above, § 114, and *Shofman*, cited above, § 45).

34. There has therefore been a violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 8

35. The applicant complained of a violation of his right to an effective domestic remedy in conjunction with his Article 8 complaint. He relied on Article 13 of the Convention, which reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

36. The Government contested that argument. In particular, they submitted with reference to Article 33 (1) of the 1985 Code (see paragraph 10 above) that the applicant had had the possibility in law of challenging his paternity within a year of having learned about the child’s birth and the fact that this possibility had been subject to temporal limitations was proportionate.

37. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

38. The Court finds that, in the instant case, the limitation in time on the applicant’s possibility to contest paternity lies at the heart of his complaint under Article 13 (see paragraphs 22–35 above). The issues linked to that statutory limitation have been examined under Article 8 above. The Court therefore considers that no separate issue arises under Article 13 of the Convention (see, for a similar approach, *Dimova and Peeva v. Bulgaria*, no. 20440/11, § 47, 19 January 2017).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicant did not submit a specific claim for just satisfaction but instead invited the Court to hold that the best redress in his case would be the reopening of the judicial proceedings at the national level.

41. The Court observes that the Code of Civil Procedure 2007 provides for such a reopening possibility in cases where the Court has found a violation of the Convention and where a fresh examination of the case is necessary in order to eliminate the consequences of the violation (see paragraph 11 above). Furthermore, in the absence of a claim for a monetary

award, the Court considers that there is no call to award the applicant any sum on that account.

B. Costs and expenses

42. The applicant claimed expenses incurred in connection with the legal representation before the Court, but without specifying their amount.

43. The Government submitted that no sum for costs and expenses should thus be awarded.

44. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds* that no separate issue arises under Article 13 of the Convention in conjunction with Article 8;
4. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 April 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Angelika Nußberger
President