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

COURT (CHAMBER)

CASE OF RASMUSSEN v. DENMARK

(Application no. 8777/79)

JUDGMENT

STRASBOURG

28 November 1984

In the Rasmussen case*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of the Rules of Court**, as a Chamber composed of the following judges:

Mr. G. WIARDA, *President*,
Mr. W. GANSHOF VAN DER MEERSCH,
Mrs. D. BINDSCHEDLER-ROBERT,
Mr. F. MATSCHER,
Mr. R. MACDONALD,
Mr. C. RUSSO,
Mr. J. GERSING,

and also of Mr. M.-A. EISSEN, *Registrar*, and Mr. H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 28 June and on 22 October 1984,

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

PROCEDURE

1. The present case was referred to the Court by the European Commission of Human Rights ("the Commission") on 12 October 1983, within the three-month period laid down by Articles 32 para. 1 and 47 (art. 32-1, art. 47) of the Convention. The case originated in an application (no. 8777/79) against the Kingdom of Denmark lodged with the Commission on 21 May 1979 under Article 25 (art. 25) by Mr. Per Krohn Rasmussen, a Danish national.

2. The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Denmark recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The purpose of the request was to obtain a decision as to whether or not the facts of the case disclosed a breach by the respondent State of its obligations under Article 14 of the Convention taken in conjunction with Articles 6 and 8 (art. 14+6, art. 14+8).

3. In response to the inquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the

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* The case is numbered 9/1983/65/100. The second figure indicates the year in which the case was referred to the Court and the first figure its place on the list of cases referred in that year; the last two figures indicate, respectively, the case's order on the list of cases and of originating applications (to the Commission) referred to the Court since its creation.

** The revised Rules of Court, which entered into force on 1 January 1983, are applicable to the present case.

proceedings pending before the Court and designated the lawyer who would represent him (Rule 30).

4. The Chamber of seven judges to be constituted included, as ex officio members, Mr. J. Gersing, the elected judge of Danish nationality (Article 43 of the Convention) (art. 43), and Mr. G. Wiarda, the President of the Court (Rule 21 para. 3 (b)). On 27 October 1983, the President drew by lot, in the presence of the Registrar, the names of the five other members, namely Mr. M. Zekia, Mr. W. Ganshof van der Meersch, Mr. F. Matscher, Mr. B. Walsh and Mr. R. Macdonald (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently, Mr. Zekia and Mr. Walsh, who were prevented from taking part in the consideration of the case, were replaced by Mr. C. Russo and Mrs. D. Bindschedler-Robert, substitute judges (Rules 22 para. 1 and 24 para. 1).

5. Mr. Wiarda, who had assumed the office of President of the Chamber (Rule 21 para. 5), ascertained, through the Registrar, the views of the Agent of the Danish Government ("the Government"), the Delegate of the Commission and the representative of the applicant regarding the necessity for a written procedure (Rule 37 para. 1). On 14 November 1983, the President directed that the Agent and the representative should each have until 15 February 1984 to file a memorial and that the Delegate should be entitled to reply in writing within two months from the date of the transmission to him by the Registrar of whichever of the aforesaid documents should last be filed. On 6 February 1984, the President extended the first time-limit until 15 March.

The Government's and the applicant's memorials were received at the registry on 19 March. On 17 April, the Secretary to the Commission informed the Registrar that the Delegate would reply at the hearing.

6. After consulting, through the Registrar, the Agent of the Government, the Commission's Delegate and the applicant's representative, the President directed on 3 May that the oral hearings should open on 26 June 1984 (Rule 38). On 24 November 1983, he had granted to the representative leave to use the Danish language on this occasion (Rule 27 para. 3).

On 30 May, the Registrar, acting on the instructions of the President, requested the Commission and the Government to produce certain documents, which were received on 7, 12 and 15 June.

7. The hearings were held in public on 26 June at the Human Rights Building, Strasbourg. Immediately before they opened, the Court had held a preparatory meeting.

There appeared before the Court:

- for the Government

Mr. T. LEHMANN, Ministry of Foreign Affairs, *Agent*,
Mr. T. MELCHIOR, Ministry of Justice, *Counsel*,
Mr. J. BERNHARD, Ministry of Foreign Affairs,
Mr. B. VESTERDORF, Ministry of Justice, *Advisers*;

- for the Commission
Mr. T. OPSAHL, *Delegate*;
- for the applicant
Mrs. J. LINDGÅRD, advokat, *Counsels*

The Court heard addresses by Mr. Lehmann and Mr. Melchior for the Government, by Mr. Opsahl for the Commission and by Mrs. Lindgård for the applicant, as well as replies to its questions.

AS TO THE FACTS

I. THE PARTICULAR CIRCUMSTANCES OF THE CASE

8. The applicant, Mr. Per Krohn Rasmussen, is a Danish citizen, born in 1945. He currently works as a clerk and resides in Nyborg.

He was married in 1966. During the marriage, two children were born, a boy in 1966 and a girl, Pernille, on 20 January 1971. The applicant had grounds, even before the latter's birth, for assuming that another man might be the father; however, in order to save the marriage, he took no steps to have paternity determined.

9. In June 1973, Mr. Rasmussen and his wife applied for a separation (separation ved bevilling), which they obtained on 9 August. In accordance with their agreement, Mrs. Rasmussen retained custody of the children and the competent authority issued a decision to the effect that Mr. Rasmussen should pay maintenance for them from 1 September 1973. He in fact did so from that date until 1 June 1975.

10. In March 1975, the applicant, who had previously still nurtured hopes of preserving the marriage, took some steps to institute proceedings to challenge his paternity of Pernille. To this end, he applied for legal aid. However, he did not pursue the matter since, on 28 April 1975, he and his wife signed an agreement whereby she waived all claims for maintenance for the child and he undertook to refrain from bringing any such proceedings.

11. In June 1975, the applicant and his wife applied for a divorce (skilmisse ved bevilling), which was granted on 16 July. On this occasion, he reaffirmed before the authorities that the mother should have sole custody of the children and was once more ordered to pay maintenance for them. He did not raise any objection.

12. On 16 January 1976, four days before Pernille's fifth birthday, the applicant's former wife wrote to him asserting that she was not bound by the agreement of 28 April 1975. She later lodged with the public authorities a renewed petition for maintenance, which was granted by order effective

from 1 March 1976. Since then, Mr. Rasmussen has regularly paid the maintenance.

13. On 27 January 1976, Mr. Rasmussen sought leave from the Eastern Court of Appeal (Østre Landsret) to institute proceedings out of time to determine the paternity of the girl (see paragraph 19 below).

In accordance with the normal procedure, the police, at the Court of Appeal's request, interviewed Mr. Rasmussen and his former wife in March 1976 and recorded their statements in a report.

14. The Court of Appeal refused the application on 12 April 1976, for the reason that the statutory conditions for granting leave at that time were not satisfied (see paragraph 19 below).

The applicant did not appeal against the decision within the statutory time-limit. However, on 27 July 1976, he petitioned the Ministry of Justice for leave to appeal out of time to the Supreme Court (Højesteret), but this was refused on 3 September 1976.

15. On 20 November 1978, Mr. Rasmussen applied again to the Court of Appeal for leave to institute paternity proceedings. His former wife opposed the application, on the ground that such proceedings would have a detrimental effect on the child.

By a decision of 11 December 1978, the Court of Appeal refused the application for the reason that the applicant had not brought the action contesting paternity within the time-limits provided for in section 5(2) of the 1960 Act on the Legal Status of Children ("the 1960 Act" - Lov nr. 200 af 18.5.1960 om børns retsstilling; see paragraph 19 below) and that there was no cause to grant him any exemption since the conditions laid down in section 5(3) were not met. A similar decision was given by the Supreme Court on 12 January 1979.

II. RELEVANT DOMESTIC LAW

A. Background to the 1960 Act on the Legal Status of Children

16. Prior to the enactment of the 1960 Act, which applied in Mr. Rasmussen's case, the status of children was regulated in the Illegitimacy Act of 1937 and the Legitimacy Act of the same year. Section 3 of the latter provided that proceedings to contest paternity of a legitimate child could be instituted by the mother, the husband, the child or a person appointed guardian of the child. No time-limit was laid down for the institution of such proceedings.

17. According to Danish case-law and legal writing, however, a husband could be estopped from contesting paternity of a child born in wedlock if, knowing that his wife had had sexual intercourse with another man during the relevant period, he had expressly or tacitly acknowledged after the

child's birth that he was the father. The "doctrine of acknowledgement" (anerkendelseslaeren) was first established in 1956 by a judgment of the Supreme Court, reported in Ugeskrift for Retsvaesen (U.f.R.) 1956, p. 107. Although there was no case-law on the point, legal writers expressed the view that this doctrine applied also to mothers (see, for instance, Ernst Andersen, Aegteskabsret I, 1954, p. 95).

18. In December 1949, the Ministry of Justice set up a committee, called the "Paternity Committee", to consider, inter alia, certain aspects of the status of children born in wedlock. In June 1955, the Committee submitted its report (no. 126/1955) on the amendment of the rules regarding determination of paternity.

As to the husband's right to institute proceedings to challenge paternity of a child born in wedlock, the Committee recommended the institution of a double time-limit of six months from the time when the husband became aware of the facts affording grounds for contesting his paternity and not later than three years from the birth of the child; but that the Ministry of Justice should be empowered to grant exemption from these time-limits in special circumstances. The Committee took the view that the welfare of the child (and of the marriage) required that his status should be established as soon as possible and that the husband's interests should yield to these considerations (page 60 of the report). One of the reasons given by the Committee for this recommendation was that a paternity suit instituted by the husband several years after the child's birth would place the child in a worse position than if proceedings had been instituted earlier: the court would possibly have to give judgment in the husband's favour on the basis of the blood-group determination, while it would be difficult to obtain a paternity and a maintenance order against another man.

On the other hand, the Committee found that the child's right to institute proceedings should not be subject to any time-limit, since the views which might lead to restricting the husband's right to institute proceedings were not of relevance in the case of an action brought by the child. For the same reasons, there should likewise be no time-limit with regard to actions brought by the child's guardian or the mother (page 59 of the report).

The Committee also discussed the question whether the doctrine of acknowledgement should be embodied in legislation. However, it considered that this was a matter which was better left to the courts to decide on a case-by-case basis.

B. The 1960 Act

19. The Government subsequently introduced a Bill which incorporated in part the recommendations of the Paternity Committee but increased the time-limits to twelve months and five years respectively and conferred competence to grant exemption on the Courts of Appeal. This legislation

entered into force, as the 1960 Act, on 1 January 1961. It provided in section 5(1) that proceedings to challenge paternity of a child could be brought by the husband, the mother, the child or a guardian of the child. Sub-sections 2 and 3 of section 5 read as follows:

> "(2) Paternity proceedings must be instituted by the husband within twelve months after he becomes cognizant of the circumstances which may give grounds for his renunciation of paternity, and not later than five years after the birth of the child.
>
> (3) However, a Court of Appeal may, on the conditions set out in section 456r, sub-section 4, of the Administration of Justice Act, grant leave to institute proceedings after the expiry of the time-limits set out in sub-section 2 above."

Section 456r, sub-section 4, of the Administration of Justice Act concerns re-opening of a paternity case after the expiry of the applicable time-limit or time-limits. It provides that leave may be granted by a Court of Appeal if quite exceptional reasons are given as to why a review was not sought earlier, if the particular circumstances of the case especially warrant it and if it can be assumed that the re-opening will not cause the child any great inconvenience.

The 1960 Act did not impose any restriction on the mother's right to institute paternity proceedings, nor did it refer to the doctrine of acknowledgement (see paragraph 17 above).

20. In case-law, however, the "doctrine of acknowledgement" continued to be applied and there were Court of Appeal and Supreme Court decisions confirming the earlier view that the doctrine also applied to mothers.

21. The circumstances which, under the doctrine of acknowledgement, estop the husband from contesting paternity will, as a general rule, also militate against granting him leave to institute proceedings out of time. However, a decision to grant leave is without prejudice to the outcome of the subsequent procedure (see the Eastern Court of Appeal's judgment of 1977, U.f.R. 1977, p. 907).

C. Amendments to the 1960 Act

22. In 1969, the Ministry of Justice set up a committee, called the "Matrimonial Committee", to consider whether the evolution of social conditions, and notably the changes in the social status of women and the resultant changes in the conception of the institution of marriage since the introduction of the 1960 Act, called for amendment of, inter alia, the provisions governing the legal status, during marriage and after separation or divorce, of children born in wedlock. In fact, the proportion of women working outside their homes has increased to about 60 per cent. As a result, men are, to a much higher degree than before, looking after the children and are more frequently granted their custody in the event of separation or divorce. Mothers are therefore now more likely to challenge paternity in

order to prevent custody being given to the husband. In a report on cohabitation without marriage (samliv uden aegteskab I - nº 915/1980, p. 72), published in January 1981, the Matrimonial Committee stated:

> "There is consensus in the Committee that also the mother's right to institute paternity proceedings and request re-opening should be subject to a relatively short time-limit, for example corresponding to the time-limits which today apply to the father. Furthermore, the Committee is to some degree in favour of an absolute time-limit, applicable to all, for instituting and re-opening paternity proceedings."

23. On the basis of the recommendations of the Matrimonial Committee, the Government tabled a Bill before Parliament in March 1982, proposing certain amendments to the 1960 Act.

The explanatory memorandum to this Bill referred to the Rasmussen case, then pending before the European Commission. On page 4, it mentioned that the Agent of the Government had declared in evidence before the Commission that new legislation on the matter would be introduced, establishing uniform time-limits within which both men and women could contest the husband's paternity; the memorandum added that the Ministry of Justice considered such legislation "desirable in the interest of the child's needs" (af hensyn til barnets tarv).

24. On 26 May 1982, the Danish legislature passed an Act amending the 1960 Act, which entered into force on 1 July 1982.

Following this amendment, sub-sections 2 and 3 of section 5 of the 1960 Act now provide:

> "(2) Paternity proceedings must be instituted not later than three years after the birth of the child. This provision shall not apply, however, where proceedings are instituted by the child after having attained the age of 18.
>
> (3) A Court of Appeal may grant leave to institute proceedings after the expiry of the time-limit set out in the first sentence of sub-section 2 of this section where quite exceptional grounds are given as to why proceedings were not instituted at an earlier stage, in circumstances where institution of proceedings is especially warranted, and where it can be presumed that the proceedings will not cause the child any great inconvenience."

The "doctrine of acknowledgement" is still applied by the Danish courts to estop spouses from contesting paternity of a child (see the Supreme Court's judgment of 17 January 1984).

PROCEEDINGS BEFORE THE COMMISSION

25. In his application of 21 May 1979 to the Commission (no. 8777/79), Mr. Rasmussen alleged that he had been subjected to discrimination based on sex in that, under the relevant Danish law applicable at the time, his

former wife had an unlimited right of access to court to challenge his paternity, whilst he did not.

26. The Commission declared the application admissible on 8 December 1981. In its report adopted on 5 July 1983 (Article 31 of the Convention) (art. 31), the Commission expressed the opinion that there had been a breach of Article 14 taken in conjunction with Articles 6 and 8 (art. 14+6, art. 14+8) (eight votes against five). The full text of the Commission's opinion and of the separate opinion contained in the report is reproduced as an annex to the present judgment.

AS TO THE LAW

27. Mr. Rasmussen complained of the fact that, under the 1960 Act (see paragraph 19 above), his right to contest his paternity of a child born during the marriage was subject to time-limits, whereas his former wife was entitled to institute paternity proceedings at any time. He alleged that he had been the victim of discrimination on the ground of sex, contrary to Article 14 of the Convention, taken in conjunction with Article 6 (art. 14+6) (right to a fair trial, including the right of access to court) and with Article 8 (art. 14+8) (right to respect for private and family life).

28. Article 14 (art. 14) of the Convention reads as follows:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

I. DO THE FACTS OF THE CASE FALL WITHIN THE AMBIT OF ONE OR MORE OF THE OTHER SUBSTANTIVE PROVISIONS OF THE CONVENTION?

29. Article 14 (art. 14) complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 (art. 14) does not necessarily presuppose a breach of those provisions - and to this extent it has an autonomous meaning -, there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter (see, inter alia, the Van der Mussele judgment of 23 November 1983, Series A no. 70, p. 22, para. 43).

30. The applicant submitted that Article 6 (art. 6) was applicable to paternity proceedings and, further, that a husband's wish to have his family

status determined fell within the scope of Article 8 (art. 8). These contentions were accepted by the Commission.

31. For the Government, it was questionable whether the object of a paternity suit was a determination of "civil rights and obligations", within the meaning of Article 6 para. 1 (art. 6-1), mainly because of the strong public interest involved in proceedings of this kind. They also contested the applicability of Article 8 (art. 8), maintaining that its object was the protection of the family and not the dissolution of existing family ties.

32. Article 6 para. 1 (art. 6-1) secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal (see the Golder judgment of 21 February 1975, Series A no. 18, p. 18, para. 36). It is true that the public interest may be affected by proceedings of the kind which Mr. Rasmussen wished to institute, but, in the Court's view, this factor cannot exclude the applicability of Article 6 (art. 6) to litigation which, by its very nature, is "civil" in character. And an action contesting paternity is a matter of family law; on that account alone, it is "civil" in character.

33. Article 8 (art. 8), for its part, protects not only "family" but also "private" life. Even though the paternity proceedings which the applicant wished to institute were aimed at the dissolution in law of existing family ties, the determination of his legal relations with Pernille undoubtedly concerned his private life. The facts of the case accordingly also fall within the ambit of Article 8 (art. 8).

II. WAS THERE A DIFFERENCE OF TREATMENT?

34. Under the 1960 Act, the husband, unlike the child, its guardian or the mother, had to institute paternity proceedings within prescribed time-limits (see paragraph 19 above).

The Government pointed out that this difference which appeared on the face of the Act was reduced in scope by two factors: firstly, it was open to the husband to seek leave from the Court of Appeal to institute proceedings out of time (see paragraph 19 above); secondly, not only the husband but also the mother might be debarred from contesting paternity by virtue of the "doctrine of acknowledgement" (see paragraphs 17 and 20 above). However, the Government did not suggest that these factors were sufficient to eliminate the difference laid down by statute. Indeed, the mother would not, like her husband, be estopped solely for being out of time; her action might simply fail as a result of her previous attitude.

For the purposes of Article 14 (art. 14), the Court accordingly finds that there was a difference of treatment as between Mr. Rasmussen and his former wife as regards the possibility of instituting proceedings to contest the former's paternity. There is no call to determine on what ground this difference was based, the list of grounds appearing in Article 14 (art. 14) not

being exhaustive (see the Engel and Others judgment of 8 June 1976, Series A no. 22, p. 30, para. 72).

III. WERE THE APPLICANT AND HIS FORMER WIFE PLACED IN ANALOGOUS SITUATIONS?

35. Article 14 (art. 14) safeguards individuals who are "placed in analogous situations" against discriminatory differences of treatment (see the above-mentioned Van der Mussele judgment, Series A no. 70, p. 22, para. 46).

36. The Government supported the conclusion of the minority of the Commission that husband and wife were not placed in analogous situations as far as a paternity suit was concerned, there being a number of distinguishing characteristics between their respective positions and interests. The majority of the Commission, on the other hand, found that those characteristics were not sufficiently fundamental to warrant that conclusion.

37. The Court does not consider that it has to resolve this issue, especially as the positions and interests referred to are also of relevance in determining whether the difference of treatment was justified. It will proceed on the assumption that the difference was made between persons placed in analogous situations.

IV. DID THE DIFFERENCE OF TREATMENT HAVE AN OBJECTIVE AND REASONABLE JUSTIFICATION?

38. For the purposes of Article 14 (art. 14), a difference of treatment is discriminatory if it "has no objective and reasonable justification", that is, if it does not pursue a "legitimate aim" or if there is not a "reasonable relationship of proportionality between the means employed and the aim sought to be realised" (see, inter alia, the Marckx judgment of 13 June 1979, Series A no. 31, p. 16, para. 33).

39. The Government pleaded that the limited difference of treatment that existed had an objective and reasonable justification. They relied, inter alia, on the following points:

(i) the respective interests of the husband and of the mother in paternity proceedings were different: unlike the husband's interests, the mother's generally coincided with those of the child; and it was natural that, in weighing the interests of the different family members, the Danish legislature should in 1960 have taken the view that the interests of the weaker party, namely the child, should prevail (see paragraph 18 above);

(ii) the legislature had also regarded it as necessary to lay down time-limits for the institution of paternity proceedings by a husband because of

the risk that he might use them as a threat against the mother, in order to escape maintenance obligations;

(iii) in deciding whether the national authorities have acted within the "margin of appreciation" which they enjoy in this area, regard should be had to the economic and social circumstances prevailing at the relevant time in the country concerned and to the background to the legislation in question;

(iv) Denmark had undoubtedly amended the 1960 Act when this proved to be warranted by subsequent developments (see paragraphs 22-24 above), but it could not be said that the former Danish legislation on this matter was at the relevant time less progressive than that of the other Contracting Parties to the Convention.

The Commission found that the only legitimate purpose for the difference of treatment complained of by the applicant was the desire to avoid the child's being placed in a worse position by the institution of paternity proceedings several years after its birth. However, since this aim could have been achieved through the "doctrine of acknowledgement" (see paragraphs 17 and 20 above), there was no reasonable relationship of proportionality between the means employed - the laying-down of time-limits solely for the husband - and the aim sought to be realised.

40. The Court has pointed out in several judgments that the Contracting States enjoy a certain "margin of appreciation" in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law (see the judgment of 23 July 1968 in the "Belgian Linguistic" case, Series A no. 6, p. 35, para. 10; the National Union of Belgian Police judgment of 27 October 1975, Series A no. 19, p. 20, para. 47, and pp. 21-22, para. 49; the Swedish Engine Drivers' Union judgment of 6 February 1976, Series A no. 20, p. 17, para. 47; the above-mentioned Engel and Others judgment, Series A no. 22, p. 31, para. 72; and the Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 87, para. 229). The scope of the margin of appreciation will vary according to the circumstances, the subject-matter and its background; in this respect, one of the relevant factors may be the existence or non-existence of common ground between the laws of the Contracting States (see, mutatis mutandis, the Sunday Times judgment of 26 April 1979, Series A no. 30, p. 36, para. 59).

41. Examination of the Contracting States' legislation regarding paternity proceedings shows that there is no such common ground and that in most of them the position of the mother and that of the husband are regulated in different ways.

The Danish legislation complained of was based on recommendations made, after a careful study of the problem, by the Paternity Committee set up by the Ministry of Justice in 1949 (see paragraph 18 above). The Court has had close regard to the circumstances and the general background and has borne in mind the margin of appreciation which must be allowed to the

authorities in the matter. In its view, they were entitled to think that the introduction of time-limits for the institution of paternity proceedings was justified by the desire to ensure legal certainty and to protect the interests of the child. In this respect, the legislation complained of did not differ substantially from that of most other Contracting States or from that currently in force in Denmark. The difference of treatment established on this point between husbands and wives was based on the notion that such time-limits were less necessary for wives than for husbands since the mother's interests usually coincided with those of the child, she being awarded custody in most cases of divorce or separation. The rules in force were modified by the Danish Parliament in 1982 because it considered that the thinking underlying the 1960 Act was no longer consistent with the developments in society (see paragraphs 22-24 above); it cannot be inferred from this that the manner in which it had evaluated the situation twenty-two years earlier was not tenable.

It is true that an equivalent result might have been obtained through the "doctrine of acknowledgement" (see paragraphs 17 and 20 above), but, for the reasons already indicated, the competent authorities were entitled to think that as regards the husband the aim sought to be realised would be most satisfactorily achieved by the enactment of a statutory rule, whereas as regards the mother it was sufficient to leave the matter to be decided by the courts on a case-by-case basis. Accordingly, having regard to their margin of appreciation, the authorities also did not transgress the principle of proportionality.

42. The Court thus concludes that the difference of treatment complained of was not discriminatory, within the meaning of Article 14 (art. 14).

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has been no violation of Article 14 taken in conjunction with Article 6 (art. 14+6) or with Article 8 (art. 14+8).

Done in English and in French, and delivered at a public hearing at the Human Rights Building, Strasbourg, on 28 November 1984.

Gérard WIARDA
President

Marc-André EISSEN
Registrar

The separate opinion of Mr. Gersing is annexed to the present judgment in accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 52 para. 2 of the Rules of Court.

G.W.
M.-A.E

CONCURRING OPINION OF JUDGE GERSING

1. To my regret, I am not able to share the reasoning of the majority concerning the applicability of Article 8 (art. 8).

The majority finds that as the determination of the applicant's legal relations with Pernille undoubtedly concerned his private life, the case accordingly also falls within the ambit of Article 8 (art. 8). In my view, this is far too wide an understanding of the right protected by this provision.

2. The wording of the provision obliges the Danish Government to show "respect for [Mr. Rasmussen's] private ... life". The ordinary meaning of this expression does not clearly cover a father's right to disclaim his paternity of a child. Regard must therefore be had to the origin of the provision.

3. The preparatory work on Article 8 (art. 8) indicates that the authors of the Convention had in mind to protect the individual against an "arbitrary interference with his privacy" (Collected Editions of the "Travaux Préparatoires" of the European Convention on Human Rights, The Hague, Nijhoff, 1976, Vol. III, p. 222, and Vol. IV, pp. 110, 188, 202 and 222). Although one should be careful not to attach too much importance to the intention behind a provision that is more than thirty years old if later social and cultural developments justify a broader understanding of its words within their linguistic limits, I find that the gap between the original intention and the majority's application of the Article is so great that it seems doubtful whether one can ignore the preparatory work completely in this case.

4. In its Marckx judgment of 13 June 1979 (Series A no. 31, p. 15, para. 31), the Court held that Article 8 (art. 8) does not merely compel the State to abstain from interference: in addition, there may be positive obligations inherent in an effective "respect" for the guaranteed rights. This meant that the State had to adapt its legal system to allow an unmarried mother to lead a normal family life with her child.

A similar consideration led the Court to the conclusion in its Airey judgment of 9 October 1979 (Series A no. 32, p. 17, para. 33) that a married woman had the right to seek recognition in law of her de facto separation from her husband.

The facts in the above cases are, however, so different from the situation now before the Court that these judgments cannot be of decisive importance for the ruling in the case.

5. The majority's reasoning is based on an interpretation of Article 8 (art. 8) which is broader than that previously adopted by the Court and seems to imply that any legal problem that has a bearing on a person's private life falls within the scope of Article 8 (art. 8).

Protocol No. 7 (P7) to the Convention, which is about to be opened for signature, contains, however, in Article 5 (art. P7-5) a provision concerning spouses' relations with their children. I take that as a further indication that

the Parties to the Convention have not found that Article 8 (art. 8) covers this aspect.

6. For the above reasons, I do not find Article 8 (art. 8) to be applicable in this case.