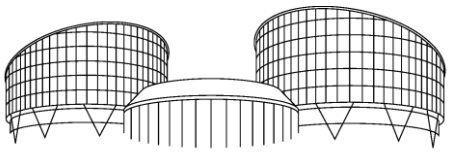

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF A.L. v. POLAND

(Application no. 28609/08)

JUDGMENT

STRASBOURG

18 February 2014

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 A.L. v. Poland,

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

Ineta Ziemele, *President,*
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Vincent A. De Gaetano,
Krzysztof Wojtyczek, *judges,*

and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 28 January 2014,

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

PROCEDURE

1. The case originated in an application (no. 28609/08) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Mr A.L. ("the applicant"), on 5 June 2008. The President of the Section acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Mr Z. Cichoń, a lawyer practising in Cracow. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz, succeeded by Ms J. Chrzanowska, of the Ministry of Foreign Affairs.

3. The applicant complained about the unfavourable outcome of the proceedings for annulment of paternity.

4. On 16 December 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1974 and lives in Straszęcin.

6. On 27 October 1995 R, with whom the applicant had been in a relationship but to whom he was not married, gave birth to a son, D.

7. R and the applicant got married on 31 October 1995. On 2 November 1995 the applicant acknowledged paternity of D before the Dębica Registry Office (*Urząd Stanu Cywilnego*). In accordance with Article 77 § 1 of the Family and Custody Code R, the mother of the minor child, gave her consent to the applicant's acknowledgment of paternity.

8. On an unspecified date R lodged a petition for divorce with the Zielona Góra Regional Court. On 12 January 2000 the Regional Court granted a decree of divorce. The court awarded the custody of D to the mother. Both parents were ordered to contribute to the maintenance and upbringing of the child. The applicant was ordered to pay first 300 PLN and later 400 PLN per month in child maintenance. No questions as to the applicant's paternity were raised in the divorce proceedings.

9. Soon after, R married D.S. and their son B was born in 2000.

10. The applicant submitted that he subsequently began having doubts as to his paternity of D and decided to undergo a DNA test.

11. On 4 January 2007 the applicant took D to a private DNA analysis laboratory and had a DNA paternity test conducted. The DNA test confirmed that the applicant was not D's father. As the applicant could not personally initiate civil proceedings for denial of paternity, due to the expiry of the time-limit specified in Article 80 § 1 of the Family and Custody Code, he requested the Nowa Sól District Prosecutor to file a claim in his name.

12. On 7 February 2007 the District Prosecutor questioned the applicant about the circumstances surrounding the recognition of his paternity of D. The applicant stated, among others, that:

> "She told me that I had had sexual intercourse with her during a party to which she had invited me as her fiancé. .... I do not remember having had sexual intercourse [with R] at the time... Never before marrying R did I have physical contact with her. ...
>
> I have never believed that I am the father of the child. I have recognised this child as mine because I thought I did not have any other option. ...
>
> Even before the birth of the child I learnt that R, who at that time had the family name N, had had sexual intercourse with other men during the period in which D had been conceived. .... "

13. With regard to his contact with D, the applicant stated that he had not yet informed D that he was not his father. D still considered him as his father and called him "Dad". However, their contact was rare and not particularly warm. He requested the prosecutor to file a claim disclaiming his paternity because he had been deceived by R.

14. R was also questioned by the prosecutor. She stated that the applicant had been aware that he may not have been the father of D. Nonetheless, he had voluntarily decided to recognise his paternity of D. She also stated that D had close emotional ties with the applicant and that the annulment of recognition would be a terrible shock for D.

15. D.S., R's current husband, stated that he did not intend adopting D because the child had a difficult personality and suffered from the ADHD (Attention Deficit Hyperactivity Disorder). Furthermore, D knew that D.S. was not his father.

16. On 22 March 2007 the District Prosecutor filed a statement of claim with the Nowa Sól District Court asking for the annulment of the applicant's recognition of paternity of D. The defendants in the proceedings were the applicant, R and D. The prosecutor referred to the DNA test results and to the child's mother's testimonies which confirmed that at the time when D had been conceived she had had sexual contact with other men. The prosecutor further stressed that R's new husband D.S. confirmed that he treated D as his son and together with his biological son B they all formed a family. Lastly, the prosecutor submitted that the applicant's contact with D was rare and mostly amounted to his obligation to pay maintenance.

17. The District Court appointed a guardian *ad litem* for D. The guardian requested the court to dismiss the prosecutor's claim as it was contrary to the child's interests.

18. The court heard evidence from the applicant, R and D.S.

19. The applicant testified that he had been aware that D may not have been his child at the time of the recognition of his paternity in November 1995.

20. R objected to the prosecutor's claim on the ground that the applicant had recognised his paternity of D being aware that he could not have been his father. She had not deceived the applicant because the applicant had known that she had had sexual contact with other men. She stated that D had close emotional ties with the applicant and was convinced that the applicant was his father. It would have been very traumatic for D to learn that the applicant was not his father given his ADHD. She submitted that the applicant had stopped paying child maintenance in January 2007.

21. On 20 June 2007 the Nowa Sól District Court dismissed the prosecutor's action.

22. The court established the following facts. Before the birth of D the applicant and R were cohabiting. However, they also had sexual contact with other partners of which they were both perfectly aware. In 1995 R fell pregnant. She told the applicant that he had been the father of the child and that the child had been conceived during a party. The applicant's mother put pressure on the applicant to marry R.

23. D was a pupil at primary school. He was diagnosed with the ADHD. From the age of seven years old D was certified as disabled and in need of assistance in his education. The court further established that the applicant had had sporadic contacts with D and that the latter had considered the applicant his father. The court noted that the private DNA paternity test confirmed that the applicant was not D's biological father. The current husband of R did not treat D as his own child and had no intention of

adopting D even in the case of the applicant's acknowledgment of paternity being annulled.

24. Having regard to these facts, the District Court held that the prosecutor's claim was ill-founded. The court noted that the applicant could not personally file a claim under Article 80 § 1 of the Family and Custody Code due to the fact that more than one year had elapsed since the date of the recognition of the child. However, even assuming that that the relevant time-limit had not yet expired, his claim would not have been successful since he was required to prove that his recognition of paternity was affected by one of the defects of his declaration of will specified respectively in Articles 82, 84, 86 or 87 of the Civil Code.

25. The court stressed that the applicant had confirmed that he had been perfectly aware that R had had sexual relationships with other men. It did not find credible the applicant's assertion that he had recognised his paternity of D simply because he had been told by R that D had been conceived at a party. There were no grounds to consider that R had deceived the applicant in order to make him to recognise the child. The court held that the applicant had been fully aware that D might not have been his child; nevertheless, he decided to acknowledge his paternity of D.

26. Furthermore, it was not established that the applicant's recognition of D had been affected by any other fault which could affect its validity. Accordingly, the court found that there were no grounds to annul the applicant's recognition of D on the basis of Article 80 § 1 of the Family and Custody Code.

27. However, the claim was filed by a prosecutor who was not bound by the conditions specified in Article 80 § 1 of the Family and Custody Code. Therefore, the court had to examine whether the child's interest and the rule of law required the annulment of the act of recognition of paternity.

28. The court noted that the institution of recognition of paternity was based on the premise that the child's interest and the proper functioning of the family were priority values. In this connection, the legislature assumed that for the protection of these values it was justified in some cases to accept a legal fiction that a child was recognised by a man who was not his biological father. In principle, the act of recognition of paternity should reflect the actual legal situation; however, the legislature did not exclude that an act of recognition of paternity would be furnished by a man who only considered having a duty of care towards the child. This was reflected in the fact that there was no duty to verify whether an act of recognition of paternity conformed to the reality.

29. The court held that the arguments put forward by the prosecutor did not justify the finding that the annulment of recognition would be in the child's interest. The court found, in so far as relevant:

> "First of all, the prosecutor's argument, that due to sporadic contacts between the defendant [the applicant] and the minor and the fact that the current husband of R

accepted the boy and treats him as his biological son there are no contraindications to the annulment of recognition, was not confirmed.

It was established in the proceedings that the minor D still considers the defendant [the applicant] as his father. DS [R's husband] does not intend to adopt the boy or even to treat him as his own son. In this situation there is a real risk that making the boy aware after so many years that the man who he has considered as his biological father, was not his real father, would constitute a traumatic experience for him. Such information would have been also very difficult to convey due to the fact that it is not possible to establish who the real father is.

It does not seem either that the protection of the rule of law would justify the annulment of recognition. It is not possible to defend the argument that the existence of a legal relationship in which a man, who is not a biological father of the child, is considered the father of the child would be an affront to the rule of law, in particular where a man conscientiously decided to recognise his paternity of the child. In the present case it should be firmly underlined that the defendant [the applicant] knew perfectly well that he may not be the father of the child, yet he decided to recognise his paternity. ... Accordingly, the defendant [the applicant] should bear the consequences of his conscious decisions for the sake of the child's well-being and the child's proper development.

The position of the legislature in this respect is perfectly clear. The rationale of the provisions concerning the acknowledgment of paternity of a child clearly indicates that the legislature considers this manner of establishing the filiation too serious so as to make its existence dependent on a free wish of a man. For this reason the law treats the recognition of paternity of a child as a definitive act and permits that it will be questioned only when the act was affected by defects or in the case of unforeseen special circumstances – which cannot be accepted in the light of the existing legal order or the principles of social co-existence.

There were no such circumstances in the present case. The protection of the rule of law does not justify, as claimed by the prosecutor, the disclaiming of the recognition of paternity and the child's interest goes against the change of the existing legal relationship."

30. The applicant appealed against the District Court's judgment. He argued that the court had disregarded the DNA evidence which excluded his paternity of D. He also submitted that the interest of the minor and the rule of law required that the child's paternity be assigned to the biological father in order to terminate the legal fiction.

31. The prosecutor requested the Regional Court to dismiss the appeal. In his view, the interest of the child no longer justified the pursuance of the original claim. The prosecutor also raised the issue of the applicant's standing to file an appeal.

32. On 29 November 2007 the Zielona Góra Regional Court dismissed the applicant's appeal.

33. The court firstly referred to the Supreme Court's resolution of 20 March 1975 (case no. III CZP 81/74) according to which a legally recognised father was not entitled to file an appeal against the judgment dismissing the prosecutor's claim on the basis of an accepted fact that he was not the child's biological father. The Regional Court noted that the

Family and Custody Code did not bestow on the man who had recognised paternity of a child the right to sue for annulment of his recognition on the ground that he was not the child's father. The right to sue for annulment of recognition of paternity in such circumstances was bestowed on the child so recognised when he or she reached the age of majority (Article 81 of the Family and Custody Code).

34. The court further considered that, even assuming that the applicant had standing to file an appeal, there were no grounds to change the first-instance judgment. The lower court found that the rule of law required maintaining the *status quo* and that the child's well-being justified a departure from the biological truth. In addition, the Regional Court relied on the applicant's divorce file from which it transpired that he had treated D as his own child. It also referred to the Supreme Court's view that in matters of establishing paternity there was no absolute priority for biological truth. In the light of the above, the applicant's claim for annulment of the recognition was ill-founded.

35. The applicant filed a cassation appeal. However, on 17 October 2008 the Supreme Court refused to entertain it.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. The Family and Custody Code of 1964

36. Article 72 of the Family and Custody Code reads:

> "If there is no legal presumption in operation that the mother's husband is the father of her child, or if such presumption has been rebutted, the paternity of the child may be established by the recognition of paternity by the father, or by a decision of a court."

37. In accordance with Article 77 of the Code the recognition of paternity in respect of a minor child requires consent of the mother.

38. Under Article 80 § 1 of the Code (as applicable at the material time) a man who recognised his paternity of a child could seek annulment of the recognition of paternity on the ground that he made a defective declaration of will within one year from the date of recognition.

39. Pursuant to Article 81 § 1 of the Code a child who was recognised before reaching the age of majority could seek annulment of the recognition if a man who recognised it is not its father. Paragraph 2 of this Article stipulates that a child may lodge such a claim from the date of reaching the age of majority and not later than three years after that date.

40. Under Article 86 of the Code, as applicable at the material time, the recognition of paternity may be challenged by a prosecutor at any time, as long as the child is alive.

2. Amendments of 13 June 2009

41. The Family and Custody Code was amended with the effect from 13 June 2009. The new Article 78 provides that a man who recognised his paternity of a child may challenge it within six-months from the date of learning that he is not the biological father of the child. The rationale behind this amendment was that biological reality should be given a more prominent place in matters of establishing the child's parents.

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

42. The applicant complained under Articles 4, 5, 6, 7, 13 and 14 of the Convention that he had not had a possibility to challenge his paternity of D, in particular as he could not have appealed against the first-instance judgment.

43. The Court considers that the applicant complained primarily about the unfavourable outcome of the proceedings for annulment of his declaration of paternity despite clear DNA evidence to the contrary. It finds that this complaint should be examined under Article 8 of the Convention alone, 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."

A. Admissibility

44. The Government submitted that the present application constituted an abuse of the right of individual application under Article 35 § 3 of the Convention in that the applicant had misrepresented to the Court the reasons which had led him to acknowledge his paternity with respect to D.

45. In particular, the Government argued that the applicant had misled the Court in representing himself as a person deceived by the child's mother as to D's paternity. However, at the time when the applicant made a declaration of recognition of his paternity of D he had been aware that he might not be the child's biological father. In the Government's view, the applicant's testimony obtained during the domestic proceedings confirmed that the DNA test carried out in 2007 had not been the first occasion on

which the applicant had learned about the possibility that he might not be the father of D.

46. The applicant contested the Government's submissions and argued that his application had been truthful and sincere.

47. The Court reiterates that an application may be rejected as abusive under Article 35 § 3 of the Convention, among other reasons, if it was knowingly based on untrue facts (see, *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X; *Rehak v. Czech Republic* (dec.), no. 67208/01, 18 May 004; *Popov v. Moldova* (no. 1), no. 74153/01, § 48, 18 January 2005; and *Kérétchachvili v. Georgia* (dec.), no. 5667/02, 2 May 2006). Incomplete and therefore misleading information may also amount to abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation is given for the failure to disclose that information (see, *Hüttner v. Germany* (dec.), no. 23130/04, 9 June 2006; *Poznanski and Others v. Germany* (dec.), no. 25101/05, 3 July 2007; *Predescu v. Romania*, no. 21447/03, §§ 25-26, 2 December 2008; and *Kowal v. Poland* (dec.), no. 2912/11, 18 September 2012).

48. In the present case the gist of the Government's arguments does not actually concern "untrue facts" allegedly adduced by the applicant before the Court. Rather, their objection is based on their own perception of the applicant's possible intentions behind his decision to recognise D as his son. It has not been disputed that the DNA test results confirm that the applicant was not D's father and that the applicant attempted to alter the situation by requesting the prosecutor to file a claim for annulment of his declaration of paternity.

49. The Court is therefore of the view that it cannot be said that the manner in which the applicant presented his case amounts to an abuse of the right of petition.

50. The Court notes that the complaint under Article 8 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 applicant's submissions

51. The applicant submitted that at the time of the child's birth he had no possibility to challenge his declaration of paternity as DNA tests were not widely used. The applicant referred to the Court's case-law stressing that respect for family life required that biological reality should prevail over a legal presumption of paternity and that the domestic courts should have interpreted the existing legislation in the light of scientific progress (*Tavlı v. Turkey*, no. 11449/02, 9 November 2006).

52. The applicant further stressed that due to the fact that there was a one-year time-limit for contesting paternity, he could not have lodged a claim for denial of paternity himself but had relied on the prosecutor's discretion to do so on his behalf. In addition, his appeal against the first-instance judgment was dismissed mainly because he did not have legal standing. Only the prosecutor could have challenged the judgment; however, he did not do so. Lastly, given the Supreme Court's case-law he was deprived of any possibility to contest his paternity on the basis of a DNA test which had confirmed that he was not the child's biological father.

53. The applicant concluded that it was in the child's best interest to know the truth about his biological father.

2. The Government's submissions

54. The Government underlined the similarities between the applicant's case and the case of *Yildirim v. Austria* ((dec.), no. 34308/96, 19 October 1999). In addition, the applicant's case did not concern any legal presumptions, but rather a voluntary recognition of paternity of a child made in full awareness of the circumstances in which the child had been conceived.

55. The Government argued that there were legal remedies directly available to the applicant allowing determination of any doubts about his paternity. In particular, the applicant could have brought an action under Article 80 § 1 of the Family and Custody Code seeking the annulment of his recognition of paternity on account of defects in his declaration of will. They averred that at the time of D's birth (1995) DNA tests were available and admissible in court.

56. As regards a one-year time-limit provided for in this provision, the Government argued that it was sufficient in the light of the Court's findings in *Shofman v. Russia* (no. 74826/01, 24 November 2005). There, it was noted that an average limitation period for bringing proceedings to contest paternity in the Member States varied between six months and a year. In addition, the time-limit in issue was not a strict deadline, independent of the complainant. The running of that period started from the date on which recognition of paternity was made, and thus it was entirely dependent on the man's actions. They further submitted that at the time the applicant acknowledged paternity of D he had been fully aware that he might not be his biological father, and yet he voluntarily decided to make a declaration of paternity. On this account, the present case was different from *Shofman v. Russia* and *Tavlı v. Turkey* where the applicants found that they had not been biological fathers only after the statutory time-limit had expired.

57. They further maintained that contrary to *Paulík v. Slovakia* (no. 10699/05, ECHR 2006-XI (extracts) and *Różański v. Poland* (no. 55339/00, 18 May 2006), after the time-limit for his own claim had expired, the applicant had at his disposal a legal measure to determine his claim, namely Article 86 of the Family and Custody Code, which allowed

the prosecutor to bring an action for annulment of the declaration recognising the child. In the present case, the prosecutor filed such an action upon the applicant's request. The claim was examined on the merits by two instances and dismissed.

58. Consequently, the Government were of the opinion that the domestic authorities complied with their positive obligations under Article 8 of the Convention. In their view, a fair balance was struck between the different interests involved.

3. The Court's assessment

(a) Applicability of Article 8

59. The Court has previously examined cases in which a man wished to institute proceedings to contest the paternity of a child. It has found on numerous occasions that proceedings concerning the establishment of or challenge against paternity concerned that man's private life under Article 8, which encompasses important aspects of one's personal identity (see *Rasmussen v. Denmark*, 28 November 1984, § 33, Series A no. 87; *Nylund v. Finland* (dec.), no. 27110/95, ECHR 1999-VI; *Yildirim v. Austria* (dec.), no. 34308/96, 19 October 1999; *Backlund v. Finland*, no. 36498/05, § 37, 6 July 2010; *Pascaud v. France*, no. 19535/08, §§ 48-49, 16 June 2011; *Krušković v. Croatia*, no. 46185/08, § 20, 21 June 2011; *Ahrens v. Germany*, no. 45071/09, § 60, 22 March 2012; *Kautzor v. Germany*, no. 23338/09, § 63, 22 March 2012; and *Krisztián Barnabás Tóth v. Hungary*, no. 48494/06, § 28 *in fine*, 12 February 2013).

60. In the present case the applicant sought to challenge his declaration of paternity on the basis of biological evidence (see, *Paulík v. Slovakia*, no. 10699/05, § 42, ECHR 2006-XI (extracts)). There is a link between the applicant's wish to have his earlier acknowledgment that he was the father of D revoked and the applicant's private life. Accordingly, the facts of the case fall within the ambit of "private life" under Article 8.

(b) Lawfulness and legitimate aim

61. The court decision to refuse the applicant's challenge to his declaration of paternity constituted an interference with his right to respect for his private life.

62. Any such interference will constitute a violation of Article 8 unless it is "in accordance with the law", pursues an aim or aims that are legitimate under paragraph 2 of that provision and can be regarded as "necessary in a democratic society".

63. The domestic courts' decision to dismiss the prosecutor's action for annulment of the applicant's recognition of paternity of D was based on Article 86 of the Family Code.

64. The Court has acknowledged the importance of the protection of legal certainty and finality of family relations (see, *Rasmussen*, cited above, § 41; *mutatis mutandis*, *Mizzi v. Malta*, no. 26111/02, § 88, ECHR 2006-I (extracts); *Paulík*, cited above, § 44; *Phinikaridou v. Cyprus*, no. 23890/02, § 51, 20 December 2007; and *Wulff v. Denmark* (dec.), no. 35016/07, 9 March 2010). In the instant case the decision of the domestic courts pursued the legitimate aim of ensuring legal certainty and security of family relationships as well as the need to protect the interests of the child.

(c) Necessity of the interference in a democratic society

65. In determining whether the interference was "necessary in a democratic society", the Court refers to the principles established in its case-law. It has to consider whether, in the light of the case as a whole, the reasons adduced to justify that interference were relevant and sufficient for the purposes of paragraph 2 of Article 8 (see, *inter alia*, *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 70, ECHR 2001-V, and *Sommerfeld v. Germany* [GC], no. 31871/96, § 62, ECHR 2003-VIII). Undoubtedly, consideration of what lies in the best interests of the child is of crucial importance in every case of this kind; depending on their nature and seriousness, the child's best interests may override that of the parents (see *Sommerfeld*, cited above, § 66, and *Görgülü v. Germany*, no. 74969/01, § 43, 26 February 2004; and *Ahrens*, cited above, § 63).

66. According to the Court's well-established case-law, it must further be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned. It follows from these considerations that the Court's task is not to substitute itself for the domestic authorities in the exercise of their responsibilities, but rather to review, in the light of the Convention, the decisions taken by those authorities in the exercise of their power of appreciation (see, *inter alia*, *Hokkanen v. Finland*, 23 September 1994, § 55, Series A no. 299-A; *Sommerfeld*, § 62, and *Görgülü*, § 41, both cited above).

67. The choice of the means employed 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. There are different ways of ensuring "respect for private life" and balancing it against the rights of others, and the nature of the State's obligation will depend on the particular aspect of private life that is at issue (see *Odièvre v. France* [GC], no. 42326/98, § 46, ECHR 2003-III). The width of the margin of appreciation will not only depend on the specific right or rights which are concerned, but also on the nature of what is at stake for the applicant (compare *Pascaud*, cited above, § 59).

68. The Court reiterates that a number of factors must be taken into account when determining the width of the margin of appreciation to be enjoyed by the State when deciding any case under Article 8 of the

Convention. Where a particularly important facet of an individual's existence or identity is at stake, the margin allowed to the State will normally be restricted. Where, however, there is no consensus within the member States of the Council of Europe, either as to the relative importance of the interest at stake or as to the best means of protecting it, the margin will be wider (see, *S. H. and Others v. Austria* [GC], no. 57813/00, § 94, 3 November 2011, with further references). Furthermore, there will usually be a wide margin of appreciation accorded if the State is required to strike a balance between competing private and public interests or Convention rights (see *S. H. and Others*, ibid.). With regard to the width of the margin of appreciation in the present case, the Court has acknowledged that the margin of appreciation enjoyed by the Member States in respect of the determination of a child's legal status must be a wider one than that enjoyed by the States regarding questions of contact and information rights (see, *Anayo*, § 66; *Ahrens*, § 70; *Kautzor*, § 72; and *Krisztián Barnabás Tóth*, § 37, all cited above).

69. It remains to be examined whether the authorities struck a fair balance in the present case between the general interest of the protection of legal certainty of family relationships and the applicant's interest in having his acknowledgment of paternity reviewed in the light of the biological evidence.

70. It should be stressed that in the instant case the applicant's paternity was established on the basis of his free declaration**.** It was concluded in the domestic proceedings that the applicant had freely acknowledged his paternity having been fully aware that D might not have been his child (see paragraphs 25 and 29 above). Having regard to this established fact, there were no legal impediments preventing the applicant from having recourse to a remedy provided for in Article 80 § 1 of the Family and Custody Code. Relying on this provision, the applicant himself could have sought the annulment of his recognition of paternity within 12 months from the date of the recognition, arguing, for example, that he had been deceived by the mother of the child. The applicant failed to bring this action for reasons unconnected with the law (see, *Wulff v. Denmark*, cited above).

71. In respect of the paternity proceedings, the Court has constantly accepted that the need to ensure legal certainty and finality in family relations as well as to protect the interests of the child justifies the introduction of a time-limit or other limitations on the institution of such proceedings (see, *Rasmussen*, § 41; *Phinikaridou*, § 51; *Wulff*; and *Backlund*, § 45, all cited above). The establishment of an inflexible time limit, however, is likely to run counter to the importance of the private life interest at stake. Thus, the Court found a violation in *Shofman v. Russia* (cited above) where an absolute one-year time limit ran without any exceptions from the date when the putative father was informed that he had been registered as the father, irrespective of his awareness of the

circumstances casting doubt on his paternity. The time-limit of one year set out in Article 80 § 1 of the Family and Custody Code cannot be characterized *per se* as inflexible as it is connected with a putative father's decision to recognise his paternity of a child and does not follow from a legal presumption.

72. As mentioned above, the Court has constantly stressed the paramount importance of the interests of the child and their due representation in judicial proceedings (see, as the recent authority, *X v. Latvia* [GC], no. 27853/09, § 96, ECHR 2013). Furthermore, the domestic authorities are in a better position to assess the best interests of the child. When the domestic authorities carefully assess those interests, the Court should not, in principle, contradict their findings, in particular, if they are made by an independent court in judicial proceedings (see, *mutatis mutandis*, *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, § 107, ECHR 2012); however, the Court must be satisfied that the decision-making process leading to the adoption of the impugned measures by the domestic courts was fair and allowed those concerned to present their case fully, and that the best interests of the child were defended (see, *X v. Latvia* [GC], §102, cited above).

73. In January 2007 the applicant underwent a DNA test which excluded his paternity. The Court notes that while under the relevant domestic law the applicant was prevented from bringing an action himself due to the expiry of the prescribed time-limit; it was nevertheless open to him to apply to the public prosecutor to bring an action on his behalf (see paragraph 11 above). The applicant's request was successful and the prosecutor lodged a claim challenging the applicant's paternity of D.

74. It is important to note the District Court appointed a guardian to represent the interests of the child in the proceedings. The Court is satisfied that the interests of the child were duly represented in the judicial proceedings. The guardian *ad litem* after examining the circumstances of the case pleaded in favour of preserving the status quo for the sake of the protection of the child.

75. In its judgment of 20 June 2007, the District Court confirmed, on the basis of genetic evidence, that the applicant was not the child's biological father. However, it dismissed the action brought by the prosecutor on the ground that it ran counter to the child's best interests. The court established that, prior to acknowledging paternity, the applicant had knowledge that D might not have been his child. While examining the prosecutor's action the District Court was guided by the considerations of the child's best interests and of the proper functioning of the family.

76. In the present case D was twelve years old at the time of the proceedings brought to disprove the applicant's paternity. Even though D's contacts with the applicant were rare, the District Court found that he still treated the applicant as his father. Moreover, the District Court found that

there were no prospects that the identity of D's biological father would ever be established. In addition, R's husband did not envisage adopting D or treating him as his own son. It was also established that the annulment of the applicant's paternity would be a traumatic experience for D (see paragraph 29 above).

77. The appellate court, despite certain doubts as to the applicant's standing, did examine his appeal on the merits. It confirmed the District Court's finding that the *status quo* should be maintained and that the child's interest justified a departure from the biological truth (see paragraph 34 above).

78. According to the Court's established case-law Article 8 of the Convention encompasses, subject to permissible limitations, the putative father's right to institute proceedings to deny paternity of a child who, according to scientific evidence, is not his own (*Mizzi*, § 112; and *Shofman*, § 45, both cited above). In the present case the applicant had, via the prosecutor, access to a court to challenge his paternity and the courts examined the merits of the case. The Court finds that the domestic courts properly identified the conflicting values and interests at stake. They took into account the different interests of the applicant and of the child. They carefully balanced those interests and provided detailed reasons for their findings. They found, in particular, that the applicant had recognised his paternity of D in full awareness that he might not have been his biological father. In such circumstances, once the limitation-period for the applicant's own claim to seek annulment of his recognition of paternity expired, it was open to the domestic courts to give greater weight to the interests of the child rather than to the applicant's interest in disproving his freely acknowledged paternity. This approach has been confirmed in a number of cases decided by the Court (see, inter alia, *Yildirim v. Austria* (dec.), cited above; *Kňákal* v. *Czech Republic* (dec.), no. 39277/06, 8 January 2007; and *Wulff v. Denmark* (dec.), cited above).

79. Lastly, it is of importance for the issue of the fair balance in the present case that on reaching the age of majority D himself would be able to institute proceedings with a view to disclaiming the recognition of his paternity by the applicant, as provided expressly Article 81 § 1 of the Family and Custody Code (see paragraph 39 above). The time-limit for bringing such an action is 3 years from the date of reaching the age of majority.

80. In the light of the foregoing and having regard to the wider margin of appreciation left to the States in matters regarding legal status of a child, the Court concludes that a fair balance has been struck between the interests of the applicant and the general interest in ensuring legal certainty and security of family relationships as well as the need to protect the interests of the child.

The Court is therefore satisfied that the reasons adduced by the national authorities to justify the interference with the applicant's rights were relevant and sufficient. Consequently, it considers that the measure complained of can be seen as necessary in democratic society in order to protect the rights of others.

81. There has accordingly been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT,UNANIMOUSLY,

1. *Declares*, the application admissible;

2. *Holds*, that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 18 February 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Ineta Ziemele
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) Concurring opinion of Judge Kalaydjieva;
(b) Concurring opinion of Judge De Gaetano;
(c) Concurring opinion of Judge Wojtyczek.

I.Z.
F.E.P.

CONCURRING OPINION OF JUDGE KALAYDJIEVA

I fully share my colleagues' view that the present case is distinct from cases in which legal parentage was determined on the basis of a presumption in law regarding paternity within a married couple, or resulted from some form of deceit. Unlike these situations, the applicant in the present case arrived at his decision to undertake the responsibility of becoming the legal father of a child in full awareness of the circumstances and in pursuit of his own autonomous will as protected by Article 8 of the Convention. The notion of "private life" incorporates the right to respect for an individual's decision to become or not to become a parent, and this embraces the decision to become a legal parent notwithstanding the biological origins of the child or embryo. In so far as the issue falls within the ambit and under the protection of Article 8, I can accept that the applicant's complaints do not necessarily amount to an abuse of the right of petition (see paragraph 49 of the judgment). However, I have serious misgivings as to whether the "link between the applicant's wish to have his earlier acknowledgment" revoked (paragraph 60) suffices to reasonably characterise the opening of proceedings at his own request as constituting "an interference" (paragraph 61) attributable to the authorities and not to his own wish.

In my understanding the crucial issue is in fact whether the authorities were under any positive obligation to act on the applicant's request for re-examination of his personal decision on the basis of data concerning the actual biological origins of the child, which, although freshly obtained, did not necessarily come as a surprise to him. Even if such an obligation existed (which I doubt), it appears quite obvious that in so far as this was done after a substantial period of established family links with the child, in these proceedings the domestic courts were clearly under an obligation not only to examine the applicant's belated change of mind, but also to take into account and balance it against the child's rights under Article 8 and to afford the latter the requisite protection. This is precisely what they did.

Similarly to the Court's findings in the case of *Evans v. the United Kingdom* ([GC], no. 6339/05, §§ 90-92, ECHR 2007-I), I do not consider that the applicant's right to respect for his initial decision to become a parent should be accorded greater weight than the child's right to respect for his rights under Article 8, which attracts equal protection. The applicant's right to respect for his private and family life under Article 8 cannot be interpreted as an obligation on the authorities to secure the pursuit of his subsequent personal preferences notwithstanding their obligation to respect the rights of others.

CONCURRING OPINION OF JUDGE DE GAETANO

I agree that in this case there has been no violation of Article 8.

Paternity in this case was not the result of some legal presumption. The applicant voluntarily chose to recognise the child when he knew perfectly well that there was a high probability that the child was not his. He acted deliberately (one could almost say recklessly). There was no deceit or other external pressure. In the circumstances I find it difficult to understand how the domestic courts' decisions refusing his challenge to his declaration of paternity can sensibly be understood as an "interference" with his right to respect for private life. Recognition of paternity by the husband, like a decision to adopt, is an act inherently intended to strengthen and preserve private and family life. To the best of my knowledge there exists no positive obligation on the part of the State to allow a person to retract such recognition at will, just as there is no positive obligation to allow a parent to terminate an adoption at will. That, to my mind, is the long and the short of it all.

Paragraphs 61 to 80 of the judgment are, in my view, simply gilding the (wrong) lily.

CONCURRING OPINION OF JUDGE WOJTYCZEK

I fully agree with the view expressed by Judge De Gaetano in his concurring opinion that under the Convention there exists no positive obligation on the part of the State to allow a person to retract at will the recognition of a child. At the same time, the judgments issued by the domestic courts in the circumstances of the present case cannot be seen as an interference with the applicant's rights protected under Article 8 of the Convention. The right to respect for private and family life presupposes an effective protection of the stability of family relations.