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

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The dismissal of an action to establish paternity lodged outside the time-limit without a valid reason did not breach the Convention

In today's **Chamber** judgment[1] in the case of Lavanchy v. Switzerland (application no. 69997/17) the European Court of Human Rights held, by a majority (five votes to two), that there had been:

no violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned the Swiss courts' refusal to allow an exception to the time-limit laid down by domestic law (one year from the date of reaching the age of majority) for bringing an action to establish a legal parent-child relationship, and the consequent dismissal of the applicant's action seeking to have the relationship with her biological father recorded in the civil-status register. The applicant complained of the fact that the Swiss authorities had not acknowledged the existence of a "valid reason" for not complying with the time-limit, and alleged a breach of her right to respect for her private life on that account.

The Court noted that the Swiss courts' decisions had been carefully reasoned, taking the Court's case-law into account. In particular, the courts had identified several points during the applicant's life when she could have consulted the details concerning her parentage in the civil-status register and sought information about the steps to be taken, even after expiry of the time-limit. Those considerations led the courts to conclude that there had been no justification for the applicant's inactivity over a 31-year period.

The Court therefore considered that the delay on the applicant's part in bringing proceedings to establish a legal parent-child relationship, as noted by the domestic courts, could not be regarded as justifiable for the purposes of the Court's case-law. Hence, the Swiss courts had not failed in their obligation to strike a fair balance between the interests at stake.

Principal facts

The applicant, Christiane Dominique Lavanchy, is a Swiss national who lives in Penthalaz (Switzerland).

Following her birth in 1964 the applicant was entered in the register of births as the child of an unknown father and was placed under the guardianship of the guardianship authority (*Tuteur Général*) with a view to establishing her paternity. She was raised by her maternal grandparents until August 1967 and was then placed in a specialised facility until she reached the age of majority in 1984.

In 1965 the applicant and her mother brought paternity proceedings against G.Q. On conclusion of the proceedings in 1966 the Justice of the Peace approved a settlement under the terms of which G.Q. agreed to pay a contribution towards the applicant's upkeep until she turned 18. In 1982 a welfare officer disclosed to the applicant the name of her putative father (G.Q.) and gave her a photograph of him.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Subsequently, at the age of 25, the applicant decided to trace her father. A first meeting took place in 1990. On that occasion G.Q. apparently confirmed to the applicant that he was her father and told her of the steps he had taken following her birth to recognise her, and in particular the fact that he had signed an agreement before a judicial authority concerning maintenance payments. The applicant and G.Q. had a cordial relationship after that, calling each other "Dad" and "my daughter", and the applicant met G.Q.'s wife and the couple's only daughter. She never asked G.Q. to undergo a DNA test or to formally acknowledge his paternity, as she was afraid of damaging their relationship.

After G.Q.'s death in 2013 the applicant received notice to appear at the opening of his will, when she learned that she was not legally recognised as G.Q.'s daughter.

In 2014 she brought civil proceedings to establish a legal parent-child relationship, requesting that G.Q. be recognised as her father. The results of a DNA test showed that he was indeed her biological father. Nevertheless, the Swiss courts observed that during his lifetime G.Q. had simply acknowledged paternity for the purposes of child maintenance, and that the applicant had not acted within the one-year period after reaching the age of majority (Article 263 § 1 of the Civil Code). They dismissed the applicant's action, finding that there had been no "valid reasons" for the delay that would justify extending the time-limit.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), the applicant complained that the Swiss authorities had prevented her from establishing a legal parent-child relationship by failing to acknowledge the existence of a valid reason for not complying with the time-limit for bringing paternity proceedings.

The application was lodged with the European Court of Human Rights on 20 September 2017.

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

Georges **Ravarani** (Luxembourg), *President*,
Georgios A. **Serghides** (Cyprus),
Dmitry **Dedov** (Russia),
María **Elósegui** (Spain),
Darian **Pavli** (Albania),
Peeter **Roosma** (Estonia),
Andreas **Zünd** (Switzerland),

and also Milan **Blaško**, *Section Registrar*.

Decision of the Court

Article 8 (right to respect for private and family life)

The Court's task was to ascertain whether a fair balance had been struck in weighing the competing interests, namely the applicant's right to establish a legal parent-child relationship with G.Q. on the one hand, and the need to respect the rights of G.Q. and of his legally recognised daughter, as well as the general interest in the protection of legal certainty, on the other hand.

The Court specified, among other things, that it drew a distinction between situations in which the time-limits laid down by domestic law for instituting paternity proceedings were absolute and rigid, and those in which domestic law allowed the time-limits to be extended if they expired before the relevant facts were known. It noted that the present case fell into the second category, since the Swiss legislation did not provide for rigid application of the time-limit, which was set at one year after the person concerned had reached the age of majority. Under Article 263 § 3 of the Civil Code,

it was possible to extend the time-limit, since an action to establish paternity could be accepted even after expiry of the time-limit where there were "valid reasons" for the delay.

The Court went on to note that the Swiss courts' decisions had been carefully reasoned, taking into account the case-law of the Court. In seeking to achieve a fair balance between the competing rights and interests, the Federal Court had duly examined the applicant's individual situation so as to determine whether her interest in establishing a legal parent-child relationship should override other considerations. After examining this issue, it noted the lack of "valid reasons", finding that the applicant had known about her parentage since 1982, that is, 31 years before G.Q.'s death, and that the mere fact of being unaware of the steps to be taken in order to establish a legal relationship was insufficient for the court to find that she had been unable to do so throughout that time. Furthermore, the Federal Court found that, after being informed of her father's identity and prior to establishing a personal relationship with him, the applicant could and should have verified the information recorded in the civil-status register, at least when she had had dealings with the civil-status authorities at the time of her marriage.

Thus, the Swiss courts had not confined themselves to finding that the time-limit for instituting proceedings to establish a legal parent-child relationship had expired, but had sought to ascertain whether the applicant's interest in having her origins legally confirmed should take precedence over the other interests at stake. They had duly weighed the various factual elements and had carefully scrutinised the reasons which, according to the applicant, had prevented her from acting sooner. Hence, the courts had identified several points during the applicant's life when she could have consulted the details concerning her parentage in the civil-status register and sought information about the steps to be taken, even after expiry of the time-limit. Those considerations led the courts to conclude that there had been no justification for the applicant's inactivity over a 31-year period.

Furthermore, the applicant had not advanced before the Court any reasons connected with the legislation that might have prevented her from taking steps to have the legal relationship with her father recorded in the civil-status register within the statutory time-limit, or at least well before 2014. In that connection the Court could not regard as valid the applicant's argument that after forming a relationship with her father she had had no particular reason to enquire into the administrative aspects of her paternity or did not want to damage the fragile new relationship with her father. Moreover, such considerations suggested that the applicant had not been unaware at the time that some formalities remained to be completed. In the Court's view, the delay on the applicant's part in bringing an action to establish a legal parent-child relationship, as noted by the domestic courts, could not be regarded as justifiable for the purposes of the Court's case-law.

Lastly, the Court noted that while persons seeking to establish the identity of their ascendants had a vital interest, protected by the Convention, in receiving the information necessary to uncover the truth about an important aspect of their personal identity, they were not exempt from the obligation to comply with the conditions laid down by domestic law. Furthermore, in the present case the decisions complained of had not deprived the applicant of that information, since the fact that G.Q. was her biological father had been confirmed by his statements and by the DNA test carried out after his death.

Consequently, there was nothing to indicate that in ruling as they did the Swiss courts had failed in their obligation to strike a fair balance between the interests at stake. There had therefore been no violation of Article 8 of the Convention.

Separate opinion

Judges Dedov and Elósegui expressed a joint dissenting opinion which is annexed to the judgment.

The judgment is available only in French.

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