

FOURTH SECTION OF THE MATTER P.C. and M.N. v. FRANCE (Requests Nos. 56513/17 and 56515/17) REFERENCE Article 8 • Privacy and family life • Refusal by the domestic courts to examine the action of the applicant, claiming to be the biological father of a child, seeking to challenge the legally established fatherhood with a view to establishing it, in application of the rules on the computation of the five-year limitation period combined with the obligation to attract the child to the case • Failure of the applicant to act at the earliest knowledge of his fatherhood when he had a sufficient period of more than three years to initiate an action • Failure of the applicant to bring the child into the case without justifying having been able to ignore the existence of this constant rule in domestic law • Findings by the

At the beginning of March 2012, the applicant left her former partner and entered into a civil solidarity pact (PACS) with the applicant on 14 March 2012. 6. On 12 December 2012, the applicant referred the case to the Justice for Family Affairs (JAF) with a view to fixing the measures relating to the two children and requested the fixing of an alternate residence. In the course of the proceedings, the applicant referred to the application for paternity challenge filed by the applicant in parallel (paragraph 10 below). 7. By a preliminary ruling of 25 February 2013, the JAF ordered a social inquiry and, pending the outcome of that inquiry, fixed the two children's usual residence with the applicant's former partner in order to maintain the brotherhood in his familiar environment. He stated that, since the separation, the children had remained

By a judgment of 21 October 2014, the Court of First Instance gave effect to the termination of non-receipt brought by the legal father and the ad hoc administrator. It declared inadmissible the action in question of paternity on the basis of Article 333(2) of the Civil Code, which provides as follows: 2 ARRÊT C.P. and M.N. v. FRANCE "...no one, with the exception of the Public Prosecutor's Office, may challenge the filiation where the possession of a declaration in conformity with a recognition has lasted at least five years from the birth or the recognition, if it was subsequently made (...)." 13. Furthermore, it finds, on the one hand, that the child was brought before the Court of Appeal only on 28 February 2013, after 25 December 2012, the date of expiry of the period of five years from the birth of whereas the action in dispute of paternity must be directed both against the [legitimate] father and against the child (...); (...) on the existence of a possession of the status in conformity with the title, (...) [the applicants] object to the absence of a quiet, public and unequivocal nature of the possession of the child of [the former partner] on the grounds that [N.] learned by his mother in 2012 that he was not a descendant of the latter's works, that a letter was sent to [the former partner of the applicant] on 13 November 2012 informing him of the envisaged proceedings, that the assignment in dispute of paternity was issued to [the former partner of the applicant] on 14 November 2012 and that the family knew that he was not the father of [N.]; However (...) neither this disclosure by the mother to the child FRANCE (...) furthermore, irrespective of the revelation made [to the legal father] that he would not be the biological father of the child as early as 2009, or 2007, since he has always behaved as such; (...) furthermore, as the first judges correctly held, the social survey of 13 June 2013, carried out at the request of the family court, establishes that the father has invested his paternity in respect of his two children with whom he has an indelible link; (...) [the applicant] still prevails from the best interests of the child to have his "true filiation" established, whereas the decision of the legislator, which, at the expiry of a period of five years during which the legal father has behaved continuously, peacefully and unequivocally as the father of the child, has prevailed on sociological truth, by no longer allowing the

Article 332 of the Civil Code provides that paternity may be challenged by providing evidence that the author of the recognition is not the father. 4 ARRÊT C.P. and M.N. v. FRANCE Furthermore, pursuant to Article 311-1 of the Civil Code, possession of the child is determined by a sufficient meeting of facts revealing the relationship of filiation and parenthood between a person and the family to which he or she is said to belong. This article specifies in a non-exhaustive manner the main elements that can be retained, namely: - the fact that the person whose filiation is challenged has treated the child as his or her own and the fact that the child has regarded the child as his or her father [tractatus]; - the fact that the same person has attended to the education and maintenance of the child [tractatus]; As regards the required continuity, it does not necessarily involve a community of life or constant relations, the mere fact that the child does not reside with his or her two parents, for example because an alternate residence is being implemented, cannot hinder the creation of filiation. It is for the judges of the case to assess, taking into account the circumstances of the case, whether the facts characterizing a filiation relationship can normally be recorded (Civ. 1st, 3 March 1992, No. 90-15.313, Bull. civ. I, No. 69). II.

THE POSSESSION OF STATE CORROBED BY A THIRD-YEAR-LEAR ASSISTANT TITLE IS OBJECTIVE TO A COMPENSATION OF PATERNITY 22. Article 4 of the Empowerment Act of 9 December 2004, aimed at simplifying the law, provided for an aFurthermore, on the basis of Article 8 of the Convention, the Court of Cassation finds that, if the application of a limitation period or a prescription period limiting a person's right to be granted recognition of his or her paternal filiation constitutes interference in the exercise of the right to respect for his or her private and family life guaranteed by Article 8 of the Convention, the end of non-receipt of an opponent provided for in Article 333 of the Civil Code pursues a legitimate purpose, in that it seeks to protect the rights and freedoms of third parties and legal security. Noting that the provisions of Article 333 of the Civil Code hinder the judicial establishment of the filiation, the Court of Cassation examines the reasons for the Court of Appeal's decision and verifies that the Court of Cassation has balanced the various interests in the presence, inFurthermore, Article 2241(2) of the Civil Code, as drafted by Law No. 2008-561 of 17 June 2008 on Civil Law Reform, provides that: "An application to court, even referred to therein, interrupts the period of prescription as well as the period of enforcement, as it does when it is brought before an incompetent court or when the act of seizure of the court is annulled by the effect of a genuine procedural defect." It appears from the parliamentary debates that, if the legislator wished that a simple procedural error did not impede the interruption of a period of time, he did not wish to extend that interruptive effect to situations in which inadmissibility sanctions the applicant's lack of diligence (Report to the Senate (No. 83) by Mr L. Beteille, p.47– Justification cited by EThe Court notes that the applicants complain of a violation of their right to respect for their private and family life. The Court recalls that the notion of 'family life' referred to in Article 8 of the Convention does not confine itself to relationships based on marriage and may include other de facto 'family relationships' (Keegan v. Ireland, 26 May 1994, § 44, A series No 290, and Kroon and Others v. The Netherlands, 27 October 1994, § 30, A series No 297-C). Furthermore, without the need to determine whether the existing links between a applicant and the child constitute a sufficient basis for them to derive from the notion of 'family life' referred to in Article 8 § 1 of the Convention, the Court recalls that it has already considered that procedures for recognising or contesting paternity fall within the notion of 'private life' within theThe applicants submit that the national authorities, which did not prevail over the biological truth in the circumstances of the case, failed to strike a fair balance between the different rights and interests at stake, thus contrary to the constant case-law of the Court. 9ARRÊT C.P. and M.N. v. FRANCE b) The Government 37. The Government submits that the rules of domestic law applicable to actions for the contest and recognition of paternity, as laid down in the Civil Code, are clear and pursue a legitimate aim, which is to ensure respect for the principle of legal certainty and respect for third parties, by giving priority to a stable situation corresponding to the social reality at the expiry of a period of five years, on the basis, inter alia, of Ahrens (supra, §§ 72, 73 and 77), it also considers that the national courtThe Court recalls that, in a very similar context to that of the present case concerning the question of the legal status of the child, it considered that the State had a broad discretion, particularly in view of the need to strike a balance between competing private or public interests and the absence of a common approach in the legislation of the Contracting States, as opposed to contact or information rights, where the Court's control is stricter and the State's discretion is weaker (Ahrens, cited above, § 70, L.D. and P.K. v. Bulgaria, cited above, §§ 59-60, and Koychev v. Bulgaria, No. 32495/15, §§ 56-58, 13 October 2020). However, even in the case of restricted control, the choices made by the State do not escape consideration by the Court. The Court must examine, in the lightIn other cases, the Court concluded that there was no breach of Article 8 of the Convention where the refusal to examine the applicants' applications for paternity was based not only on the fact that the child already had an established relationship of filiation but also on other relevant circumstances, such as the existence of a stable family life between the child and his legitimate mother and father (Ahrens, cited, § 74 in fine, Kautzor, cited, § 77 in fine, and Marinis, cited, § 77) or on the assessment of the domestic courts that, in the specific case, authorisation for a paternity search would not be in the interest of the child (Nylund v. Finland (decision), No. 27110/95, ECHR 1999 VI, Krisztián Barnabás Tóth v. Hungary, No. 8494/06, §§ 33-38, 12 February 2013, andThe Court notes in this regard that the applicants do not contest the fact that the interference alleged had a legal basis in French law. Furthermore, it is not contested that the purpose of the refusal to examine the paternity action was "the protection of the rights and freedoms of others" and

that this objective, aimed at promoting the filiation corresponding to the social and family reality, may justify a limitation of the possibility of establishing biological paternity (Ahrens, cited, §§ 74-75, and Fröhlich, cited, § 42). 48. The Court notes that the applicants mainly dispute the predictability and clarity of the rules concerning the computation of the period of enforcement. Indeed, the applicants contend that the refusal to admit the paternity action because of the application of that period of enforcement combined with theThe Court notes in this regard that the applicants did not submit to the domestic courts and the Court any evidence to demonstrate that the applicant, represented before the court of first instance by a lawyer, could have ignored the existence of this constant rule in domestic law, since it was applicable both before and after the reform of the law of filiation (paragraphs 18 and 27 above). In these circumstances, the applicants' argument that the paternity action was rejected due to the rigid and formal application of procedural rules does not appear to be justified. 13ARRÊT C.P. and M.N. v. FRANCE 52. The Court further notes, with the Court of Appeal, that the applicant did not act in dispute of paternity until the time when the applicant simultaneously requested the identification of N.'s residence, alternating between his mother and his legalWith regard to the quality of the decision-making process, the Court observes firstly that the Court of Appeal, under the supervision of the Court of Cassation and on grounds which appear to be relevant and sufficient, has characterised the factual elements allowing it, in the circumstances of the case, to verify the existence of a possession of a state in conformity with the recognition of paternity and of undeniable links between the legal father and the child (paragraph 14 above) and, consequently, a stable social reality for at least five years (paragraphs 18 and 20 above). The Court also notes that the Court of Appeal, still under the supervision of the Court of Cassation, has been able to find that this possession was peaceful, public and unequivocal and that the mere fact that the legal father knew, at one time or another, that there was doubt of his paternity couldFurthermore, the Court finds that the judicial decisions have not in practice, as the Government points out, resulted in the applicant being deprived of any relationship with N., since, as from 26 July 2013, the domestic courts have progressively introduced an extended right of visit and accommodation and then an alternate residence, allowing him to maintain a sustained relationship with the child. 56. It follows from all these elements that the domestic courts, in the particular circumstances of the case, while taking into account the legitimate aim pursued by the legislator (paragraph 24 above), managed to strike a fair balance between the various interests involved, without the rules on the calculation of the five-year period as applied affecting the very substance of the right to respect for private and family life guaranteed by Article 8 of the Convention. 57. Consequently, there was no violation of Article 8 ofHowever, it should be considered not only that they can be regarded as accessory to the main action in dispute over paternity and therefore that some flexibility can be allowed with regard to their regularisation, but also that the legal basis poses a problem. Indeed, the requirement to challenge does not come from the law but from a presumably well-established case-law and a circular issued by the Ministry of Justice of 30 June 2006, the accessibility of which to the Court's case-law is contestable. Finally, while the domestic courts opposed the applicant's foreclosure of his action by first instance judgment of 21 October 2014, confirmed by appeal on 22 September 2015 and in cassation on 1 February 2017, on the grounds that the challenges should have taken place before 25 December 2012, how can it be explained that the first instance court reopened the proceedings on 17 December 2013 in order to