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

SECTION FIFTH

CASE CP and MN v. FRANCE

(Applications Nos. 56513/17 and 56515/17)

STOP

Art 8 • Private and family life • Refusal of the domestic courts to examine the action of the applicant, claiming to be the biological father of a child, aiming to challenge legally established paternity with a view to establishing his own, in application rules for calculating the five-year foreclosure period combined with the obligation to bring the child to the cause • Applicant having failed to act as soon as he became aware of his paternity even though he had a sufficient period of more of three years to initiate action • Applicant having delayed in bringing the child into the case without justifying having been able to ignore the existence of this constant rule in domestic law • Conclusions of the domestic courts neither arbitrary nor unreasonable • Refusal based on a relationship of filiation already established for the child and with regard to the best interests of the latter • Judicial decisions which did not result in practice in depriving the applicant of any link with the child • Fair balance between the different interests involved

STRASBOURG

October 12, 2023

This judgment will become final under the conditions defined in Article 44 § 2 of the Convention. It may undergo shape adjustments.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of CP and MN v. France,

The European Court of Human Rights (fifth section), sitting in a chamber composed of:

Georges Ravarani, *president,*
Carlo Ranzoni,
Martin Mits,
Stéphanie Mourou-Vikström,
María Elósegui,
Mattias Guyomar,
Mykola Gnatovskyy, *juges,*
and Martina Keller, *deputy section clerk,*

From:

the applications (nos. 56513/17 and 56515/17) directed against the French Republic and of which two nationals of that State ("the applicants") seized the Court under Article 34 of the Convention for the Protection of Human Rights man and fundamental freedoms (“the Convention”) on August 1 , 2017,

the decision to bring the requests to the attention of the French government,

the observations of the parties,

After having deliberated in private on September 19, 2023,

Renders the following judgment, adopted on this date:

INTRODUCTION

1. The application concerns, from the perspective of Article 8 of the Convention, the refusal of the domestic courts to examine the action of the applicant, who claims to be the biological father of a child, aimed at legally contesting paternity established with a view to establishing its own and the terms of application of a foreclosure period.

ACTUALLY

2. The applicant and the applicant were born in 1965 and 1967 respectively and resides in Paris. They were represented by Me P. Spinosi, lawyer in Paris.

3. The Government was represented by its agent, MF Alabrune, Director of Legal Affairs at the Ministry of Europe and Foreign Affairs.

4. The applicant and her former partner lived together from July 15, 2005 until the beginning of March 2012. During their life together, two children were born: the first on July 15, 2006 and the second (hereinafter N.), on December 25, 2007. The latter was recognized by the applicant's former partner before his birth, on December 4, 2007.

5. At the beginning of March 2012, the applicant left her former partner and concluded a civil solidarity pact (PACS) with the applicant on March 14, 2012.

6. On December 12, 2012, the applicant applied to the family affairs judge (JAF) for the purposes of having the measures relating to the two children determined and requested the determination of alternating residence. During these proceedings, she mentioned the action to contest paternity initiated at the same time by the applicant (paragraph 10 below).

7. By a preliminary judgment of February 25, 2013, the JAF ordered a social investigation and, pending the result of this investigation, established the habitual residence of the two children with the applicant's former partner, in order to maintain siblings in their familiar environment. He explained that, since the separation, the children had remained at home and had already undergone numerous changes in their lives, such as the separation of their parents, the birth of a half-sister, the moving in of their mother with the applicant, as well as the revelation made to N. that he would have two fathers. He granted the applicant visitation and accommodation rights, every other weekend and half of the school holidays.

8. At the end of the social investigation, by a judgment of July 26, 2013, the JAF maintained the children's main residence with the applicant's former partner, granting the latter visitation and accommodation rights , extended to every Wednesday, from after school on Tuesday until Wednesday evening 7 p.m.

9. By a judgment of February 3, 2015, the Paris Court of Appeal fixed the residence of the two children alternately, after noting that the applicant and the legal father were parents very attached to N. and that if the applicant had allowed a complicated personal and family situation to persist, she was a caring mother who had to find a place in the daily life of the two children. No appeal has been filed against this decision.

10. At the same time as this action, on November 13, 2012, the applicant sent a letter to the applicant's former partner to inform him that he was N's biological father. The next day, he summoned N's legal father. in order to obtain the cancellation of his recognition of paternity, have his paternity established with regard to N. and, in the alternative, that he be given notice of his consent to genetic expertise. The applicant only filed N. on February 28, 2013 and the applicant only on March 4, 2013.

11. By a judgment of December 17, 2013, finding that N.'s interests were in opposition to those of his parents, the Paris High Court ordered the reopening of the proceedings to appoint an ad hoc administrator .

12. By a judgment of October 21, 2014, the high court upheld the plea of inadmissibility raised by the legal father and the *ad hoc administrator.* He declared the action contesting paternity inadmissible on the basis of Article 333 paragraph 2 of the Civil Code, which provides as follows:

"(...) no one, with the exception of the public prosecutor, can contest filiation when possession of a state conforming to recognition has lasted at least five years since birth or recognition, if it was made subsequently (...). »

13. Furthermore, he noted, on the one hand, that the child had only been involved in the case on February 28, 2013, after December 25, 2012, the date of expiry of the period of five years from the birth of the child and, on the other hand, that it was common ground that the action contesting paternity must be directed not only against the father whose parentage is contested but also against the child. The court deduced that on February 28, 2013, the applicant was time-barred and that he could no longer act against the legal father, the latter being able on that date to claim state possession consistent with his recognition of paternity for a period of at least five years.

14. By a judgment of September 22, 2015, the Paris Court of Appeal confirmed this judgment. The judgment is worded as follows:

"the *ad hoc* administrator of [N.] who spoke with him twice [a] mentioned in his report of May 22, 2015 that the child [then aged 7 years and almost 5 months] did not want to be heard, wishing "to be left alone";

(...) if a period of less than five years has elapsed between the birth of [N.] (December 25, 2007) and the summons to establish paternity initiated by [the applicant] (November 14, 2012), it was only on February 28, 2013, i.e. after this deadline, that the mother of the minor child (...) was summoned as legal representative of N. while the contesting action of paternity must be directed against both the [legal] father and the child (...);

(...) on the existence of a state possession in accordance with the title, (...) [the applicants] oppose the absence of peaceful, public and unequivocal character of the possession of a child of [the 'former companion] on the grounds that [N.] learned in 2012 from his mother that it was not from the latter's works, that a letter was sent to [the applicant's former companion] on November 13, 2012 informing him of the planned procedure, that the summons contesting paternity was delivered to [the latter] on [November] 14, 2012 and that the family circle knew that he was not the father of [N.] ;

But (...) neither this revelation of the mother to the child, nor the delivery of a letter followed by the summons to the request [of the applicant] before the expiry of the fixed period of five years can be sufficient to destroy the continued peaceful and unequivocal possession of a child [with regard to the applicant's former partner] (...); (...) in fact, the child who has borne since birth the name of [the applicant's former partner] who is recognized by the public authority and by his own family as his father as well as the latter in justified by the certificates produced, was always treated by [the applicant's former partner] as his son, both during life together with [the applicant] and after the separation of the couple, in March 2012, [N.] (...); (...) it should be noted that the mother's request [to determine the residence of the children] dates from December 12, 2012 at the very time when [the applicant] had the summons contesting paternity issued [and that] it is in vain to argue that these two procedures pursue different goals even though they both concern the situation of [N.];

> (...) moreover, it does not matter the revelation made [to the legal father] that he would not be the biological father of the child from the year 2009, or even 2007, since he has always behaved as such ; (...) in addition, as the first judges rightly held, the social investigation of June 13, 2013, carried out at the request of the family affairs judge, established that the father invested his paternity with regard to his two children having an unbreakable bond with them;
>
> (...) [the applicant] still relies on the child's best interests in having "their true parentage" established while the decision of the legislator which, at the end of a period of five years during which the legal father behaved in a continuous, peaceful and unequivocal manner as the father of the child, made sociological truth prevail, by no longer allowing it to be investigated whether or not he was the biological father cannot be considered as contrary to this higher interest; (...) in this regard the psychological evaluation (...), as well as the child's interview with the *ad hoc* administrator , demonstrate that the child is caught in a conflict of loyalty and that it is important to give him a lasting answer as to the identity of his father; (...) »

15. The applicants filed a cassation appeal, clearly specifying that the applicant would have been informed of “his paternity” at the end of June 2009.

16. On February 1 , 2017, the Court of Cassation rejected the applicants' appeal. On the argument based on the absence of foreclosure, the Court of Cassation substituted the reason in the following terms:

> "(...) if the foreclosure period provided for by article 333, paragraph 2, of the civil code can be interrupted by a legal request, in accordance with the first paragraph of article 2241 of the same code, the action contesting paternity must, under penalty of inadmissibility, be directed against the father whose parentage is contested and against the child; (...) the court of appeal having noted that [N.] had not been summoned within the period of five years following his birth, it follows that the action was inadmissible, the summons of November 14, 2012 , directed against the legal father alone, to the exclusion of the child, having been unable to interrupt the foreclosure period; (...) by this reason of pure law, substituted, under the conditions of article 1015 of the code of civil procedure, for those criticized, the decision is legally justified on this head; (...) »

17. On the plea based on the violation of Article 8 of the Convention, the judgment is motivated as follows:

> “(...) after noting the possession of the child's status with regard to [the applicant's former companion], the judgment states that the legislator chose to make sociological reality prevail over the the expiration of a period of five years during which the legal father has behaved continuously, peacefully and unequivocally as the father of the child, which cannot be considered contrary to the best interests of the child this ; (...) the court of appeal, which thus carried out the allegedly omitted research [of the balance of interests involved], legally justified its decision; (...) »

THE LEGAL FRAMEWORK AND INTERNAL PRACTICE RELEVANT

I. THE CONCEPT OF STATE POSSESSION REGARDING THE CHILD

18. Article 332 of the Civil Code provides that paternity may be contested by providing proof that the author of the recognition is not the father.

Furthermore, in accordance with article 311-1 of the same code, possession of status is established by a sufficient gathering of facts which reveal the link of filiation and kinship between a person and the family to which he is said to belong. . This article specifies in a non-exhaustive manner the main elements that can be retained, namely:

- the fact for the person, whose parentage is contested, of having treated the child as his own and the fact of this child having considered this person as his father [tractatus] ;
- the fact for this same person of having provided for education and the maintenance of this child *[tractatus] ;*
- the fact for this same person of having recognized the child as their own in the eyes of public authority, society or within their family *[fama] ;*
- the fact of the child having borne the name of this same person *[nomen].*

19. According to well-established case law, the combination of all these elements is not necessary for state possession to be considered established. It is sufficient, as provided for in article 311-1 of the same code, that there is a sufficient collection of facts.

20. Once established, this possession of child status is authentic until proven otherwise (Civ. 1ère, July 5, 1988, no. 86-14.489, Bull. civ. I, no. 217, Civ. 1ère, 16 March 1999, no. 97-11.717, Bull. civ. I, no. 98 and Civ. 1ère, February 20, 2001, no. 99-14.566). It is therefore a simple presumption that any interested party has the right to fight by any means (Civ. 1ère, Feb. 7, 1989, o 87-16.315, Bull. civ. I, no 65, and n Civ. 1ère, October 27, 1992, appeal no. 91-11.751, Bull. civ. I, no. 273).

21. Pursuant to Article 311-2 of the Civil Code, this state possession must also be continuous, peaceful, public and unequivocal. In particular, possession of the state must not have been obtained through constraints, pressure or violence (Civ. 1ère, Nov. 7, 2018, no. 17-26.445).
As for the required continuity, it does not necessarily imply a community of life or constant relationships; the simple fact that the child does not reside with both parents, for example because alternating residence is implemented, does not could obstruct the creation of state possession. It is up to the trial judges to assess, taking into account the circumstances of the case, whether the facts which characterize a relationship of filiation can usually be noted (Civ. 1ère, March 3, 1992, no. 90-15.313, Bull. civ. I , no. 69).

II. STATE POSSESSION CORROBORATED BY A TITLE FOR FIVE YEARS PREVENTS A PATERNITY CONTEST

22. Article 4 of the enabling law of December 9, 2004, aimed at simplifying the law, provided for a modification by order of

provisions of the civil code relating to parentage in order to secure the parentage link and protect children from parentage conflicts.
Ordinance No. 2005-759 of July 4, 2005 reforming filiation thus created an article 333 providing that, since the possession of child status has lasted five years since birth or recognition, if it has was made subsequently, no one can any longer dispute this established filiation.

Article 333, paragraph 2, of the Civil Code, in the version applicable to this dispute, is worded as follows:

> "When the possession of status is consistent with the title, only the child, one of his father or mother or the one who claims to be the true parent can act. The action is prescribed by five years from the day on which the possession of the state ceased or from the death of the parent whose parentage is contested.
>
> No one, with the exception of the public prosecutor, can contest parentage when possession of a state conforming to the title has lasted at least five years since birth or recognition, if it was made subsequently. »

23. This article provides for a period called foreclosure or prefix, beyond which the action is considered to be extinguished. Unlike prescription, it is a question of consolidating a situation and not of sanctioning the negligence of a party in exercising their rights.

24. The time limit is generally presented as a strict deadline since it is not subject to interruption and must be automatically raised by the judge, in accordance with article 125 of the code of civil procedure. Furthermore, if, at the time when the judge rules, the situation which gave rise to the appeal for this reason of inadmissibility is likely to be regularized, this must take place before the expiry of the deadline (see for example, for a case law already established at the time of the facts and *a contrario* Civ. 1ère
January 14, 1997, appeal no. 94-19.367, Bull. civ. I, no. 11, concerning an inadmissibility for lack of standing to act dismissed since a regularization had taken place before the expiry of the foreclosure period).

25. Furthermore, on the basis of Article 8 of the Convention, the Court of Cassation judges that, if the application of a time limit or a limitation period limiting a person's right to have one's paternal filiation recognized, constitutes an interference in the exercise of the right to respect for one's private and family life guaranteed in Article 8 of the Convention, the objection of inadmissibility provided for in Article 333 of the Code civil law pursues a legitimate aim, in that it tends to protect the rights and freedoms of third parties as well as legal certainty. Noting that the provisions of Article 333 of the Civil Code obstruct the judicial establishment of parentage, the Court of Cassation carries out a review of the motivation of the decision of the Court of Appeal and verifies that the latter has carried out a balancing of the different interests present, with regard to the circumstances specific to each case, before concluding or not that there was no excessive interference with the aim pursued (see, for case law already established at the time of the facts, Civ .1st
July 6, 2016, appeal no. 15-19.853, Bull. civ. I, no. 157).

III. PATERNITY CONTEST ACTIONS CALL FOR THE INJURY OF THE CHILD

26. The action to contest paternity established by a title corroborated by the possession of status involves bringing into the cause, in addition to the author of the recognition whose filiation is contested, the child and if he is a minor his or her legal representative(s). If the interests of the minor child appear to be in opposition to those of his legal representatives, an *ad hoc* administrator must be designated. Point 3. 1. 2. of paragraph III of the circular of June 30, 2006 presenting order no. 2005-759 of July 4, 2005, relating to disputes when the title is corroborated by state possession, specifies the following elements:

> "The action taken by the parent who claims to be such is directed against the child and his or her its legal representatives.
>
> The interests of the minor child appear in all cases to be in opposition to those of his legal representatives; an *ad hoc* administrator must therefore be designated by the guardianship judge or the person in charge of the proceedings, in order to represent him (art 388-2). »

27. The Court of Cassation judges that the action contesting paternity remains admissible if "(...) before the expiration of [the] period [of five years provided for in article 333 of the civil code, paragraph 2] a was called to the proceedings the *ad hoc* administrator designated, as required for any dispute over parentage, to represent the minor" (Civ. 1ère, November 6, 2013, appeal no. 12-19.269).

28. Furthermore, Article 2241 paragraph 2 of the Civil Code, in its version resulting from Law No. 2008-561 of June 17, 2008, reforming the limitation period in civil matters, provides that:

> "The legal request, even in summary proceedings, interrupts the limitation period as well as the foreclosure period.
>
> The same applies when it is brought before a court without jurisdiction or when the act of referral to the court is canceled due to a procedural defect. »

It emerges from the parliamentary debates that if the legislator wanted a simple procedural error not to prevent the interruption of a deadline, he did not want to extend this interruptive effect to situations in which inadmissibility sanctions the lack of diligence of the applicant (Report to the Senate (no. 83) by ML Beteille, p.47 – Reason taken up identically by E. Blessig report to the AN (no. 847), and Claude Brenner, "De some procedural aspects of the reform of extinctive prescription", *Revue du Droit des Contracts* 2008, no . 4 p. 1431). The Court of Cassation considers, in the same sense, that this article only applies in cases of annulment of the act of referral due to a genuine procedural defect, that is to say for simple non-observance of the rules of form of the summons (see, for case law already established at the time of the facts, Civ. 2nd, opinion, October 8, 2015, o 14-17.952, Com., January 26, 2016, appeal n no. 14 -17.952, Bull. 2016, IV, o 17, and Civ. 2nd, March 21, 2019, appeal no. n 17-10.663).

PLACE

I. JOINOR OF REQUESTS

29. Having regard to the similarity of the subject matter of the applications, the Court considers it appropriate to examine them together in a single judgment.

II. ON THE ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

30. The applicants complain about the refusal of the domestic courts to examine the applicant's action aimed at contesting the paternity of the legal father with a view to establishing that of the applicant. They maintain that by declaring the action inadmissible, the domestic courts applied too rigidly the bar of inadmissibility provided for by paragraph 2 of Article 333 of the Civil Code, by prevailing in an excessively formalistic manner an purely procedural requirement. They believe that these same courts did not strike a fair balance between the competing rights and interests at stake.

31. They rely on Article 8 of the Convention, which is worded as follows:

> “1. Everyone has the right to respect for their private and family life (...).
>
> 2. There can only be interference by a public authority in the exercise of this right to the extent that this interference is provided for by law and that it constitutes a measure which, in a democratic society, is necessary for security national security, public safety, the economic well-being of the country, the defense of order and the prevention of criminal offenses, the protection of health or morals, or the protection of the rights and freedoms of 'others. »

A. On admissibility

32. The 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 is not limited to relationships based on marriage and can include other *de facto* “family” ties *(Keegan v. Ireland,* 26 May 1994, § 44, Series A no. 290, and *Kroon and Others v. Netherlands,* October 27, 1994, § 30, Series A no. 297-C). Furthermore, without it being necessary to determine whether the existing links between an applicant and the child constitute a sufficient basis for them to fall within the notion of “family life” referred to in Article 8 § 1 of the Convention, it recalls that it has already considered that procedures for recognition or contestation of paternity fall within the notion of “private life” within the meaning of this provision, of the presumed father, because they encompass important aspects of the identity of the the latter *(Backlund v. Finland,* o 36498/05, § 37, July 6, 2010, *Ahrens v. Germany,* no. 45071/09, § 60, March n 22, 2012, *Marinis v. Greece,* no. 3004/10, § 58, October 9, 2014, and

LD and PK v. Bulgaria, nos. 7949/11 and 45522/13, §§ 54-56, December 8, 2016).

33. In the present case, the Court sees no reason to rule differently with regard to the applicant. It considers that the situation denounced by the latter falls within the scope of Article 8 of the Convention since it aims to establish one paternity instead of another. It further notes that there is no doubt that this same situation also affects the applicant's family life. The Government no longer contests, moreover, in its latest observations, the applicability of Article 8 of the Convention and recognizes that the question submitted to the Court concerns the applicant's right to family life and the right to life private of the applicant.

34. Further finding that the application is not manifestly ill-founded or inadmissible for any other reason referred to in Article 35 of the Convention, the Court declares it admissible.

B. On the merits

1. Arguments des parties

a) The applicants

35. The applicants maintain that the application made in this case by the domestic courts of the provisions of domestic law did not allow them to challenge the recognition of paternity and to establish biological reality. Based on the judgments of the Court *Shofman v. Russia* (no. 74826/01, §§ 44-45, November 24, 2005) and *Phinikaridou v. Cyprus* (no. 23890/02, § 65, December 20, 2007), they maintain that the application of a rigid time limit hindering the exercise of an action to search for paternity and the recourse in an excessively formalistic manner to a requirement of purely procedural order, undermines the very substance of the right to respect for their private life guaranteed by Article 8 of the Convention. They consider that the courts did not sufficiently take into account the particular circumstances of the case, in particular the knowledge by the legal father of the facts relating to N's paternal filiation.

36. Based on the judgments of the Court *Kautzor v. Germany* (no. 23338/09, § 73, March 22, 2012), *Jäggi v. Switzerland* (no. 58757/00, § 38, ECHR 2006-X), and *Lacárcel Menéndez v. Spain* (no. 41745/02, June 15, 2006), the applicants maintain that the national authorities, who did not make biological truth prevail in the circumstances of the case, failed to strike a fair balance between the different rights and interests at stake, thus contravening the established case law of the Court.

b) The Government

37. The Government maintains that the rules of domestic law applicable to the action for contestation and recognition of paternity, as provided for by the civil code, are clear and pursue a legitimate aim, which is to ensure respect for the principle of security legal as well as respect for third parties, by ensuring, at the end of a period of five years, a stable situation corresponding to social reality. Based in particular on the *Ahrens* judgment (cited above, §§ 72, 73 and 77), it also considers that the national courts, by characterizing the factual elements, in the light of the circumstances of the case, of possession of state consistent with the recognition of paternity which lasted five years, were able to strike a fair balance between the competing interests present.

38. The Government argues, in this respect and firstly, that the legal father, having behaved since the birth of the child like a father, even after having been informed of the fact that he would not be his father biological, could justify possession of a peaceful and unequivocal state. According to him, such possession of a stable state for five years, not seriously contested by the applicants, and the legislator's choice to then make sociological reality prevail cannot be considered contrary to the best interests of the child.

39. Secondly, he considers that the applicant, who claims to be N.'s biological father, had a passive attitude, since he only took steps to establish a parentage link in November 2012, three years after knowing that he would be her biological father. Finally, he points out that the judicial decisions did not result in depriving the applicant of any link with the child, since alternating residence between the applicant and the legal father was put in place, thus allowing the applicant, who lives with the applicant, to maintain a sustained bond with this child.

2. Assessment of the Court

a) Principles emanating from the Court’s case-law

40. The Court recalls that, in a context very similar to that of the present case concerning the question of the legal status of the child, it considered that the State had a wide margin of appreciation, having regard in particular the need to strike a balance between competing private or public interests and the lack of a common approach in the laws of the Contracting States, as opposed to the rights of contact or information, where the Court's control is stricter and the State's margin of appreciation is lower *(Ahrens,* cited above, § 70, *LD and PK v. Bulgaria,* cited above, §§ 59-60, and *Koychev v. Bulgaria,* no. 32495/15, §§ 56- 58, October 13, 2020). However, even in the case of limited control, the choices made by the State do not escape examination by the Court. This must examine, in the light of the whole case, the reasons taken into account

to arrive at the chosen solution and to determine whether a fair balance has been struck between the different interests involved. In doing so, it must pay particular attention to the essential principle according to which, whenever the situation of a child is in question, its interests must take precedence (see in particular *Wagner and JMWL v. Luxembourg,* no. 76240/01, §§ 133 -134, June 28, 2007, and *Mandet v. France,* no. 30955/12, § 53, January 14, 2016).

41. The interests of the parents nevertheless remain a factor in the balance of the different interests at stake, ensuring in particular to allow regular contact with the child *(Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 134 , ECHR 2010). The Court's task, however, is not to replace the domestic authorities, who benefit from direct contact with all those concerned, but to assess from the perspective of the Convention the decisions they have rendered in the exercise of their powers. discretion (see, among others, *AL v. Poland,* no. 28609/08, § 66, February 18, 2014).

42. In certain cases, the Court has thus considered that despite the margin of appreciation granted to States in this area, Article 8 of the Convention requires that the biological father is not completely prevented from establishing his paternity. or excluded from the life of the child, unless there are compelling reasons linked to the best interests of the latter to do so. She thus ruled that it was absolutely impossible for a man claiming to be the biological father to seek to establish his paternity, on the sole ground that another man had already recognized the child, without examining the particular circumstances of the case and the different interests at stake, disregarded Article 8 of the Convention *(LD and PK v. Bulgaria,* cited above, § 75, and *Koychev,* cited above, §§ 62-68).

43. In other cases, the Court concluded that there was no violation of Article 8 of the Convention when the refusal to examine the applicants' requests for paternity was based not only on the fact that the child already had an established parentage link 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 above, § 74 *in fine, Kautzor,* cited above, § 77 *in fine,* and *Marinis,* cited above, § 77) or on the assessment of the domestic courts according to which, in the concrete case, the authorization of a paternity search would not be in the interest of the child *(Nylund v. Finland* (dec.), no. 27110/95, ECHR 1999 VI, *Krisztián Barnabás Tóth v. Hungary,* no. 8494/06, §§ 33-38, 12 February 2013, and *Fröhlich v. Germany,* o 16112 /15, §§ 62 to 66, July 26, 2018).
n

44. The Court takes into account in particular the decision-making process and verifies that it included certain guarantees such as the detailed examination of the facts by the competent authorities, the balancing by these authorities of the different interests at stake or the possibility for the applicant to explain his position and personal situation, so as to ensure the required protection of his interests *(Ahrens,* cited above, § 76, and *Krisztián Barnabás Tóth,* cited above, §§ 33 and 36).

45. Concerning the time limits for acting or other limitations on the introduction of an action seeking or contesting paternity, the Court accepts that these limits can be justified by the desire to ensure legal certainty and the definitive nature of the family relations and thus protect both the interests of the child and those of the legal fathers, in order to protect them from late complaints (see, for example, Phinikaridou, cited above, § 51 and the case *law* therein cited, and *AL v. Poland,* cited above, § 64). It judges, however, that a rigid time limit leading to an absolute impossibility of taking an action seeking paternity, applied independently of the circumstances of the case, infringes the very substance of the right to respect for private life guaranteed by the Article 8 of the Convention *(Backlund,* cited above, §§ 55-57, *Grönmark v. Finland,* no. 17038/04, §§ 55 and 57, 6 July 2010, *Röman v. Finland,* no. 13072/05, §§ 55- 58, January 29, 2013, and *Doktorov v. Bulgaria,* no. 15074/08, §§ 31-32, April 5, 2018).

46. Finally, in the cases of *Konstantinidis v. Greece* (no. 58809/09, § 61, 3 April 2014, and *Silva and Mondim Correia v. Portugal,* no os 72105/14 and 20415/15, § 68, October 3, 2017), the Court ruled that the vital interest of the applicants in having the biological truth legally established does not exempt them from complying with the requirements of the law internal and to demonstrate diligence so that the domestic courts can make a fair assessment of the competing interests involved.

b) Application in the present case

47. The refusal to examine the paternity action constitutes in this case an interference within the meaning of Article 8 of the Convention. Such interference violates Article 8 unless, “provided for by law”, it pursues one or more legitimate aims provided for in paragraph 2 and is, moreover, “necessary in a democratic society”. The Court notes in this regard that the applicants do not dispute the fact that the interference complained of had a legal basis in French law. Nor is it disputed that the refusal to examine the paternity action had the aim of “protecting the rights and freedoms of others” and that this objective, aimed at promoting filiation corresponding to social and family reality, may justify a limitation of the possibility of establishing biological paternity *(Ahrens,* cited above, §§ 74-75, and *mutatis mutandis Fröhlich,* cited above, § 42).

48. The Court notes that the applicants essentially contest the predictability and clarity of the rules concerning the calculation of the foreclosure period. Indeed, the applicants maintain that the refusal to admit the action to contest paternity due to the application of this time limit combined with the obligation to bring the child into the cause constitutes, in the particular circumstances of the present case, an interference disproportionate to the aim pursued by the legislator. They argue that due to an overly rigid application of purely procedural requirements and thus making social reality prevail over the search for truth

biological, the domestic courts failed to strike a fair balance between the competing rights and interests involved.

49. The Court must therefore, in the light of the case as a whole, on the one hand, verify whether the rules for calculating the time limit which led the domestic courts to declare the applicant's action inadmissible were applied in a manner compatible with the Convention and, on the other hand, examine whether the decision-making process which resulted in the impossibility of contesting the filiation established by a recognition of paternity in order to establish another filiation link included certain guarantees, in particular if the reasons given by these domestic courts were relevant and sufficient, within the meaning of paragraph 2 of Article 8.

50. As regards the application by the domestic courts of the rules for calculating the time limit combined with the obligation to include the child in the case, the Court notes that, in the particular circumstances of the case, the time limit did not in practice prevent the applicant from acting earlier since he acknowledges having been informed that he was the biological father of the child at the end of June 2009 (paragraph 15 below). above) and that he then had a period which appears sufficient of more than three years to initiate an action in order to assert his interests, the five-year time limit expiring on December 25, 2012 (see a contrario, *Doktorov ,* cited above, § 29, concerning a short period of one year having expired before the applicant learned of the facts justifying his disavowal of paternity). The Court notes in this respect that the applicants have not cited, either before the domestic courts or before it, any reason which would have prevented them from acting earlier, when N. was then only one year old. year and six months, thus allowing a stable social situation to continue over time, the reality of which they cannot now dispute.

51. The Court further observes that the applicant's action was declared inadmissible, on the grounds that the latter had delayed in bringing N., and more specifically his legal representative, in the case of a child who was still a minor. In fact, the applicant only completed this formality on February 28, 2013, three months after the initial referral to the court on November 14, 2012. The Court notes that he then had a period of more than one month. to regularize his action, the foreclosure period expiring on December 25, 2012, which gave him sufficient time to comply with the rules of procedure. In this respect, the applicants have not presented any evidence before the domestic courts and the Court capable of demonstrating that the applicant, represented before the court of first instance by a lawyer, could have been unaware of the existence of this constant rule in domestic law, since it is applicable both before and after the reform of the law of filiation (paragraphs 18 and 27 above). In these conditions, the applicants' argument that the paternity action was rejected due to a rigid and formalistic application of procedural rules does not appear to be founded.

52. The Court further observes, with the Court of Appeal, that the applicant only acted to contest paternity at the time when the applicant simultaneously requested the establishment of N.'s residence, alternately with his mother and his legal father (paragraphs 6, 10 and 14 above). If the Court is aware that, in certain circumstances, the best interest of the child may be to know his true genetic identity, it observes that the applicant, who maintains that there would be no doubt as to the real paternity of N., would have been the person best placed to intervene spontaneously in the procedure, without waiting to be forced into it, thus allowing a conflictual and increasingly problematic situation to persist over time for the child (RL *and Others v. Denmark* no. 52629/11, § 48, 7 March 2017). However, the Court recalls that the vital interest of the applicants in having the biological truth legally established does not exempt them from complying with the requirements laid down by domestic law and from demonstrating diligence so that the domestic courts can carry out a fair assessment of the competing interests present *(Konstantinidis,* cited above, § 61, *Silva and Mondim Correia,* cited above, § 68, and *Lavanchy v. Switzerland,* o 69997/17, §§ 36 to 39, October 19, 2021).

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53. Concerning the quality of the decision-making process, the Court notes first of all that the Court of Appeal characterized, under the supervision of the Court of Cassation and by reasons which appear relevant and sufficient, the factual elements allowing, in the circumstances of the case, to verify the existence of a possession status consistent with recognition of paternity as well as unbreakable links existing between the legal father and the child (paragraph 14 above) and therefore 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 control of the Court of Cassation, was able to note that this possession was peaceful, public and unequivocal and that the simple fact that the legal father knew, at one time or another, that there was a doubt about his paternity could not in itself call into question the fact that he always behaved like a father to N. The Court observes in this respect that the applicants do not allege that this state possession would have been acquired by fraud, coercion, pressure or violence (paragraph 20 above). In these conditions, the Court therefore sees no reason to distance itself from the conclusions of the domestic courts which appear neither arbitrary nor unreasonable.

54. Furthermore, the Court notes that the Court of Appeal based its refusal to examine the request to contest the applicant's paternity not only on the fact that the child already had an established parentage link, but also with regard to of the best interests of the latter, who was then only seven years old and was caught in a conflict of loyalties vis-à-vis his mother and his legal father (paragraph 14 above). The Court notes that N., represented in the proceedings by an *ad hoc* administrator who spoke with him twice, indicated, through the latter, that he did not

did not wish to be heard by the judges and wanted to be “left alone” (paragraph 14 above). The Court therefore considers that the Court of Appeal, under the supervision of the Court of Cassation (paragraph 17 above), was able to consider that it was not in the best interests of the child to be confronted to the question of paternity in particular with regard to his young age *(Fröhlich,* cited above, § 64, concerning the case of a six-year-old child), preferring at this stage to keep the latter in the family environment to which he had been accustomed since the separation of his legal father and his mother (paragraph 14 above). The Court, which does not have the task of replacing the domestic authorities, who benefit from direct relations with all those concerned *(AL v. Poland,* cited above, § 66), therefore sees no reason to move away from these conclusions, the applicants having not presented any evidence in this regard, either before the domestic courts or before the Court, which could call them into question *(Ahrens,* cited above, § 77).

55. Furthermore, the Court notes that the judicial decisions did not result in practice, as the Government points out, in depriving the applicant of any link with N., since from July 26, 2013, the domestic courts gradually implemented expanded visitation and accommodation rights, followed by alternating residence, allowing him to maintain a sustained bond with the child.

56. It follows from all of these elements that the domestic courts were able, in the particular circumstances of the case, while taking into account the legitimate aim pursued by the legislator (paragraph 24 above), to provide a fair balance between the different interests present, without the rules for calculating the five-year period as they were applied affecting the very substance of the right to respect for private and family life guaranteed by Article 8 of the Convention.

57. Therefore, there has been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT

1. *Decides,* unanimously, to join the requests;

2. *Declares,* unanimously, the requests admissible;

3. *Holds,* by six votes to one, that there has been no violation of Article 8 of the Convention.

Done in French, then communicated in writing on October 12, 2023, in application of article 77 §§ 2 and 3 of the regulation.

Martina Keller
Deputy Registrar

Georges Ravarani
President

Attached to this judgment, in accordance with Articles 45 § 2 of the Convention and 74 § 2 of the Rules, is the statement of the separate opinion of Judge Stéphanie Mourou-Vikström.

G.R.
M.K.

DISSENTING OPINION OF JUDGE MOUROU-VIKSTRÖM

I did not agree with the majority of the chamber which concluded that there was no violation of Article 8 of the Convention in this case which concerns the procedural requirements for implicating the child and the mother in a action to contest paternity. The reasons which lead me to believe that an attack on the private and family life of the applicant must be noted are the following:

It appears from the provisions of article 333 paragraph 2 of the civil code that the time limit to bring an action contesting paternity is 5 years.

As the child was born on December 25, 2007, the deadline expired on December 25, 2012.

The applicant, in his capacity as the supposed biological father, formalized a summons for the purpose of annulment of the recognition of paternity of the legal father, on November 14, 2012, therefore within the legal deadline.

On the other hand, it appears that he brought the case against the child on February 28, 2013 and the child's mother on March 4, 2013. Certainly, these accusations took place outside the 5-year period. However, it should be considered that not only can they be considered as accessories to the main action contesting paternity and therefore that a certain flexibility can be allowed regarding their regularization, but also that the legal basis poses a issue. Indeed, the requirement for accusation does not emerge from the law but from supposedly well-established case law and from a circular issued by the Ministry of Justice, dated June 30, 2006, the accessibility of which of the Court's case law is questionable.

Finally, while the domestic courts opposed the applicant's foreclosure of his action by first instance judgment of October 21, 2014, confirmed on appeal on September 22, 2015 and on cassation on February 1, 2017, on the grounds that the defendants should have intervene before December 25, 2012, how can we explain that the court of first instance reopened the proceedings on December 17, 2013 in order to request the appointment of an administrator for the purposes of representing the child? This decision, which requires a challenge after the date of December 24, 2012, can only be understood as a validation by the domestic courts of a regularization occurring after the foreclosure date which is therefore only intended to apply to the main action.

Finally, the Court of Cassation made a substitution in the reasons for its judgment of the reasons concerning the inadmissibility of the action. Indeed, it referred to article 2241 of the civil code which relates to the causes of interruption of the foreclosure period but which is not the textual legal support requiring the accusation of the child and the mother in the framework of the action contesting paternity. Furthermore, the well-established and constant nature of the case law requiring the accusation of the child and the mother, within the strict time limit of 5 years, in matters of contesting paternity, is subject to discussion, with only one case being cited in the Chamber judgment (Civ. 1st

Nov. 6, 2013, appeal no. 12-19.269).

In a matter as sensitive and intimate as recognition of paternity, it should be remembered that the Convention aims to guarantee, more than in any other area, not theoretical or illusory rights, but concrete and effective rights. . The procedural requirement imposed, the legal basis of which cannot be considered established, accessible and foreseeable, and the definitive inadmissibility raised against the applicant are likely to result in a violation of Article 8 of the Convention.

ANNEX

List of requests

No.	Application No	Name of the case	Filed on	Represented by
1.	56513/17	C.P. c. France	01/08/2017	Patrice SPINOSI
2.	56515/17	M.N. c. France	01/08/2017	Patrice SPINOSI