FOURTH SECTION

CASE OF PAULÍK v. SLOVAKIA

(Application no. 10699/05)

JUDGMENT

STRASBOURG

10 October 2006

FINAL

10/01/2007

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 Paulík v. Slovakia,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr M. PELLONPÄÄ,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,
and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 19 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 10699/05) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovakian national, Mr Jozef Paulík ("the applicant"), on 28 February 2005.

2. The applicant was represented by Ms Z. Kupcová, a lawyer practising in Bratislava. The Slovakian Government ("the Government") were represented by their Agent, Mrs A. Poláčková.

3. On 9 June 2005 the President of the Chamber decided that the application should be given priority under Rule 41 of the Rules of Court.

4. On 22 August 2005 the President decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1931 and lives in Bratislava.

6. In 1966 the applicant had a sexual relationship with a woman who gave birth to a daughter, I., on 17 December 1966.

7. As the applicant denied that he was the father, the mother brought proceedings in the Bratislava Regional Court (then *Mestský súd*, now *Krajský súd*) for a declaration of paternity.

8. On 31 January 1967 the mother married another man.

9. On 2 February 1970 the Regional Court found that the applicant was the father of I. and ordered him to contribute to her maintenance.

10. The Regional Court reached its finding after hearing evidence from several witnesses. It also had regard to comprehensive documentary evidence and took into consideration the results of a blood test, a test known as a "bio-hereditary test" (*dedičsko-biologická skúška*) and a report prepared by a sexologist.

It was established that the applicant had had intercourse with the mother sometime between 180 and 300 days before I.'s birth. In such cases, a presumption of paternity arose under Article 54 of the Family Code as worded at the material time (see "Relevant domestic law and practice" below), unless there were important grounds to rebut the presumption. No such important grounds were, however, established.

11. The judgment of 2 February 1970 became final and binding and the applicant complied with it, in particular by making maintenance payments. He did not, however, have any contact with I. as the mother was opposed to such contact.

12. I. learned of the applicant's existence when she obtained her first identity card. She and the applicant met for the first time shortly before she left secondary school. Subsequently, the applicant started seeing I. and, over time, their meetings became more frequent. The applicant provided I. and, after she married, her family with financial support and developed emotional ties with her and her family.

13. In 2004 the applicant and I. had a quarrel over a financial contribution, following which I. proposed that the issue of the applicant's paternity be retested.

14. Subsequently, I., the mother and the applicant voluntarily submitted to a DNA blood test with a view to determining whether the applicant was indeed I.'s father. On 18 March 2004, on the basis of that test, an expert drew up a report in which he found that the applicant was not I.'s father. I. and her family subsequently broke off all contact with the applicant.

15. The applicant then requested the prosecution service to challenge his paternity under Article 62 of the Family Code. He maintained that he was not I.'s biological father and that the declaration of his paternity had been made in a final court judgment on the basis of expert evidence that corresponded to the state of scientific knowledge at that time. Although methods for establishing paternity had evolved and he had fresh proof that he was not I.'s father, he had no means, ordinary or extraordinary, available to him under the Family Code or the Code of Civil Procedure for bringing the legal position into line with the biological reality.

16. On 2 December 2004 the Bratislava V. District Prosecutor interviewed I. in connection with the applicant's motion. She stated, *inter alia*, that if the applicant did not want her to be his daughter, she had no objection to his denial of paternity.

17. The Bratislava Regional Prosecutor and the Prosecutor General informed the applicant in letters of 30 December 2004 and 31 March 2005 respectively that the determination of his paternity was *res judicata* and that the prosecution service lacked the competence to have the matter reviewed by a court.

18. On 4 March 2005 the applicant wrote to the Chairman of the National Council of the Slovak Republic (*Národná rada Slovenskej republiky*) and to the Chairman of the Constitutional Affairs Committee of the National Council requesting them to take legislative measures with a view to securing the effective protection of his rights. In response, the secretary to the Chairman of the National Council referred the applicant to the Prosecutor General and advised him to request the Prosecutor General to challenge the 1970 judgment by way of an extraordinary appeal on points of law (*mimoriadne dovolanie*).

19. On 7 March 2005 the applicant, who was represented by a lawyer, lodged a complaint under Article 127 of the Constitution with the Constitutional Court (*Ústavný súd*). The complaint was directed against all levels of the public prosecution service and the National Council.

The applicant maintained that there was a discrepancy between the legal position created by the judgment of 1970 and the real situation reflected in the DNA report of 2004 and that there were no legal means of removing that incongruity under the Code of Civil Procedure or the Family Code.

According to the applicant, neither the general public nor I. had any legitimate interest in maintaining the situation as it stood. Conversely, he had an interest in ensuring that the legal position and the biological reality corresponded. The applicant also stated that the authorities had failed to take adequate positive measures to protect his rights.

As a result, he had wrongly been identified as I.'s father in various public documents and records, such as the registers of births and marriages. The information about his paternity had also been included in his medical records and employment files. His identity had thus been affected and he had no way of clarifying the matter. Moreover, in law he was related to I.'s family. Thus, in the event of need, she and her children would be able to oblige him to contribute to their maintenance. As I. was legally his daughter, she was also his heir, which limited his freedom of testamentary disposition.

20. The Constitutional Court examined the complaint as a matter of priority and on 17 March 2005 declared it inadmissible. It observed that the prosecution service had not been guilty of any lack of diligence in dealing with the applicant's claims. Although the outcome had not been to the

applicant's satisfaction, they had dealt with his claims in accordance with the existing law. Thus, in so far as the complaint was directed against the prosecution service, the Constitutional Court ruled that it was manifestly ill-founded. As for the remainder of the complaint, it observed that issues of paternity fell within the jurisdiction of the ordinary courts, which were not only bound by national law but also by international instruments. It could not therefore be assumed that they would have refused to protect the applicant's interests if he were to have recourse to them. As he had not done so, the remainder of his complaint was inadmissible for non-exhaustion of the available remedies.

II. RELEVANT DOMESTIC LAW

A. Family Code (Law no. 94/1963 Coll., as amended, in force until 31 March 2005)

21. Pursuant to Article 51 § 1, a husband whose wife gave birth during the marriage or no later than 300 days after the marriage was dissolved or annulled was considered to be the child's father.

22. Otherwise the father was considered to be the man whom both parents had declared to be the father (Article 52 § 1).

23. Under Article 54, if paternity was not established by a joint declaration by the parents, the child or the mother could institute proceedings for its determination by a court. In such cases, unless there were important grounds for excluding his paternity, a presumption arose that a man who had had intercourse with the mother no less than 180 and no more than 300 days before the birth was the father.

24. A husband could deny paternity in court within 6 months of learning that his wife had given birth to a child (Article 57 § 1). Similarly, the wife could contest her husband's paternity within 6 months of the birth (Article 59 § 1).

25. If paternity had been established following a joint declaration by the parents, it could be contested by either the man or the mother within six months of the birth or the declaration, whichever was the later. The man was entitled to contest paternity in such a situation only if there was evidence to exclude the possibility of his being the father (Article 61).

26. After the expiry of the relevant six-month time-limit, paternity could still be challenged by the Prosecutor General if the interests of society so required (Article 62).

B. Family Code (Law no. 36/2005 Coll., in force from 1 April 2005)

27. Even after the time-limit for the parents to deny paternity has expired, paternity can still be challenged by the child. However, such a challenge will only be admissible if it is in the child's interest and at least one of the parents is still alive (Article 96).

C. Code of Civil Procedure (Law no. 99/1963., as amended)

28. Article 159 §§ 1 and 3 provide that a judgment which has been duly served and can no longer be appealed is final and binding (*právoplatný*). Once a case has been decided and the decision has become final and binding, it may not be re-examined.

29. Under Article 228 § 1 a party to civil proceedings may challenge final and binding judgments by lodging a request to re-open the proceedings where (a) facts, decisions or evidence have come to light which the requesting party could not use in the original proceedings for reasons beyond his or her control and which may result in a more favourable decision for the requesting party; (b) evidence can be examined which could not be examined in the original proceedings and may result in a more favourable decision for the requesting party; (c) the decision against the requesting party was the consequence of a criminal offence by the judge; and (d) the European Court of Human Rights has found that the requesting party's human rights or fundamental freedoms have been violated in a decision or the procedure that preceded it and the consequences of the violation were serious and have not been adequately redressed by the award of just satisfaction.

30. Article 230 § 1 provides that a request to reopen proceedings must be lodged within three months of the date on which the party concerned learned of or was able to rely on the grounds for reopening the case.

31. Pursuant to Article 230 § 2, once a judgment has been final and binding for three years, a request to reopen the proceedings can only be lodged in cases referred to under Article 228 § 1 (a) (provided the contested judgment was based on a criminal judgment that has since been quashed), (c) or (d). The time allowed for lodging a request to reopen the proceedings cannot be extended.

D. Civil Code

32. An ascendant may disinherit a descendant for any of the reasons set out in paragraph 1 of Article 469a. These include situations in which the descendant (a) contrary to *bonos mores* has failed to provide the ascendant with necessary assistance in illness, old age or other serious circumstances; (b) has consistently shown no interest in the ascendant; (c) has been

convicted and sentenced for an intentional offence to no less than one year's imprisonment; and (d) has led a constantly disorganised life.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

33. The Government submitted that the applicant had failed to comply with the requirement under Article 35 § 1 of the Convention to submit the application within six months. They noted that the applicant had learned that he was not I.'s biological father from the expert report of 18 March 2004. While conceding that there were currently no legal means available to the applicant to challenge his paternity, the Government argued that the time-limit had started to run on the date mentioned and had expired on 17 September 2004. As the application had not been lodged until 28 February 2005, it was out of time. The Government were of the view that the circumstances of the present case were not such as to amount to a continuing violation of the applicant's rights. They argued, lastly, that the position had not been affected by the prosecution service's letters of December 2004 and March 2005 since they merely explained the relevant law and did not constitute a substantive decision.

34. The applicant disagreed. He submitted that his application did not directly concern his discovery on 18 March 2004 that he was not I.'s biological father, but rather the fact that, as a result of the authorities' subsequent reactions and as the Government had admitted, he had had no means of challenging his paternity. The applicant's main contention was that that situation constituted a continuing violation of his rights, to which the six-month rule did not apply. The application merely had to be lodged within a reasonable period, which it had been. In the alternative, the applicant argued that the time-limit under Article 35 § 1 of the Convention had commenced at the earliest on 30 December 2004, the date of the letter from the Bratislava Regional Prosecutor, and that, accordingly, the application had been submitted in time. In support of that argument he emphasised that not even the Constitutional Court had dismissed his complaint as being outside the statutory two-month time-limit.

35. The Court notes that the applicant learned that he was not I.'s biological father on 18 March 2004. He sought to have his paternity contested by the public prosecution service. As the public prosecution service declined to act, the applicant then sought a remedy in the Constitutional Court, which did not reject the applicant's complaint as being out of time. In these circumstances the Court finds that the “final decision”

for the purposes of Article 35 § 1 of the Convention was the Constitutional Court's decision of 17 March 2005. That is the date when the six-month period referred to in that Article started to run. The application was lodged on 28 February 2005. It cannot, therefore, be rejected as being out of time.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

36. The applicant complained that the respondent State had failed to discharge its positive obligation to ensure respect for his private and family life, and in particular in that it had not provided him with any legal means to challenge the declaration of paternity after he discovered in 2004 that he was not I.'s biological father. He relied on Article 8 of the Convention, the relevant part of which reads as follows:

> "1. Everyone has the right to respect for his private and family life ....
>
> 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

37. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *Submissions of the parties*

38. The Government admitted that, after learning that he was not I.'s biological father, the applicant had had no legal means of disclaiming legal paternity, which had been judicially established in 1970. The applicant had been a party to the proceedings which had ended with the declaration of paternity and had had ample opportunity to assert his rights. Once the judgment of 1970 had become final, the matter was considered *res judicata*. It could only be judicially re-examined in the framework of extraordinary remedies, recourse to which was subject to time-limits. As the applicable time-limits had already expired, the issue of the applicant's paternity could no longer be reopened. In the Government's view, the Convention could not

be interpreted as guaranteeing, as such, a right to have proceedings reopened without any limits in time.

39. The Government claimed that the reason for the bar on reopening paternity proceedings once the applicable time-limit had expired was the need to ensure stability and legal certainty. The bar pursued the legitimate aim of protecting the socially recognised and accepted interests of children, which had to be weighed against the competing interests of the applicant as the father and which, in the circumstances of the instant case, prevailed. Quashing the declaration of paternity would have had unjustified adverse ramifications for I., such as a change in her identity and the resultant need to explain that change to the outside world. The Government concluded that the assessment of these matters fell within the authorities' margin of appreciation and that they had not exceeded that margin.

40. The applicant stated that there was a discrepancy between the legal position and the biological reality as regards paternity. He could discern no genuine public interest in perpetuating that discrepancy and submitted that I. had no legitimate interest in maintaining a false and artificial legal fiction. Aligning the legal position to the true biological position would, in the applicant's view, occasion minor technical changes but no unjustified substantial changes for I. The applicant emphasised that I.'s interests were no longer those of a child. She was almost 40, had her own family, had never considered him to be her father, had no objection to his disclaiming paternity and had broken off all contact with him after the DNA test. Although the domestic authorities had been aware of these facts, they had not interpreted and applied the relevant laws in a way that would afford effective protection to the applicant's interests or taken any other measures to that end.

2. The Court's assessment

41. The Court has previously examined cases in which a husband wished to institute proceedings to contest the paternity of a child. In those cases the question was left open as to whether the paternity proceedings aimed at the dissolution in law of existing family ties concerned the applicant's “family life” because, in any event, the determination of the father's legal relations with his putative child concerned his “private life” (see *Yildirim v. Austria* (dec.), no. 34308/96, 19 October 1999, and *Rasmussen v. Denmark*, judgment of 28 November 1984, Series A no. 87, p. 13, § 33).

42. In the instant case the applicant sought to challenge the declaration of paternity on the basis of biological evidence (see, *mutatis mutandis*, *Shofman v. Russia*, no. 74826/01, § 31, 24 November 2005). His contention that he is not I.'s father has direct implications for his private sphere and concerned matters such as entries in the registers of births and marriages, his medical records and employment files and, arguably, also had implications for his social identity in a broader sense.

Accordingly, the facts of the case fall within the ambit of “private life” pursuant to Article 8.

43. The Court further reiterates that the essential object of Article 8 is to protect the individual against arbitrary interference by the public authorities. However, it does not merely require the State to abstain from such interference: there may in addition be positive obligations inherent in effective “respect” for private or family life. The boundaries between the State's positive and negative obligations under this provision do not always lend themselves to precise definition; nonetheless, the applicable principles are similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and the community as a whole, and in both contexts the State is recognised as enjoying a certain margin of appreciation (see *Shofman*, cited above, §§ 33 and 34). Furthermore, even in relation to the positive obligations flowing from the first paragraph, “in striking [the required] balance the aims mentioned in the second paragraph may be of a certain relevance” (see *Powell and Rayner v. the United Kingdom*, judgment of 21 February 1990, Series A no. 172, § 41).

44. Under the relevant domestic law the applicant has no possibility of challenging the judicial declaration of his paternity. There is no indication that the conclusions reached by the domestic authorities in this respect were not “in accordance with the law”. The Court is prepared to accept that the lack of a legal mechanism to enable the applicant to protect his right to respect for his private life can generally be explained by the “legitimate interest” in ensuring legal certainty and security of family relationships and by the need to protect the interests of children (see *Rasmussen*, cited above, p. 15, § 41). It remains to be ascertained whether in the specific circumstances of the present case a fair balance has been preserved between the interest of the applicant and the general interest.

45. The applicant is seeking a review of the judicial declaration of his paternity in the light of new biological evidence which was not known to him at the time of the original paternity proceedings (contrast with *B.H. v. Austria*, no. 19345/92, Commission decision of 14 October 1992). His claim is based on his right to respect for his private life. Owing to the impossibility of disclaiming his paternity, the applicant suffers the inconveniences in his personal and working life described in paragraph 19 above.

46. As to the general interest, it is to be noted that the applicant's putative daughter is currently almost 40 years old, has her own family and is not dependent on the applicant for maintenance (contrast with *Yildirim*, cited above). The general interest in protecting her rights at this stage has lost much of its importance compared to when she was a child. Furthermore, I. initiated the DNA test and said that she had no objection to the applicant's disclaiming paternity. It therefore appears that the lack of

a procedure for bringing the legal position into line with the biological reality flies in the face of the wishes of those concerned and does not in fact benefit anyone (see *Kroon and Others v. the Netherlands*, judgment of 27 October 1994, Series A no. 297 C, p. 58, § 40).

47. In the light of the foregoing, the Court concludes that a fair balance has not been struck between the interests of the applicant and those of society and that there has, in consequence, been a failure in the domestic legal system to secure to the applicant "respect" for his "private life".

There has therefore been a violation of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLES 13 AND 14, READ IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION

48. The applicant claimed that he had been discriminated against in the enjoyment of his right to respect for his private life when compared both to fathers whose paternity had been established on other grounds and to mothers because, unlike him, they were entitled to request the Prosecutor General to challenge paternity on their behalf. In connection with this complaint the applicant also alleged a lack of an effective remedy. He relied on Articles 13 and 14, read in conjunction with Article 8 of the Convention.

Article 13 of the Convention provides that:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Under Article 14 of the Convention:

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

A. Admissibility

49. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The complaint under Article 13, taken in conjunction with Article 8 of the Convention

50. The Court observes that at the central element of this complaint is the impossibility for the applicant to challenge his adjudicated legal paternity on the grounds of new biological evidence. The Court has examined this issue above under Article 8 of the Convention and has found a violation of that Article. In view of that finding it finds it unnecessary to examine the facts of the case separately under Article 13, read in conjunction with Article 8 of the Convention.

2. The complaint under Article 14, taken in conjunction with Article 8 of the Convention

51. The Court observes that the applicability of Article 14 of the Convention to the present complaint has not been disputed. It reiterates that the right under Article 14 not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is violated when States treat differently persons in analogous situations without providing an objective and reasonable justification (see, for example, *Thlimmenos v. Greece* [GC], no. 34369/97, § 44, ECHR 2000-IV).

52. The Government submitted that the applicant could not be considered to be in an analogous situation for the purposes of Article 14 of the Convention to the persons with whom he sought comparison. In their view, the crucial factor was not the legal ground on which the declaration of his paternity was based, but rather the fact that his paternity had been declared by means of a final and binding judicial decision. The other situations relied on by the applicant were different in that the paternity of the husband of the mother, or that of the man who declared jointly with the mother that he was the father, was presumed and could be challenged in a court.

53. The applicant disagreed and reiterated his complaint. In particular, he asserted that there was only one category of fathers. All fathers essentially had the same duties, rights and responsibilities and should be treated equally. There were no effective legal means at all whereby he could challenge the declaration of paternity although he had new and conclusive evidence that he was not the biological father. In contrast, in situations where paternity was presumed, if new evidence excluding the possibility of biological paternity came to light, the presumed father and the mother could request the Prosecutor General to contest the paternity.

54. The Court accepts that there may be differences between, on the one hand, the applicant and, on the other, the putative fathers and the mothers in situations where paternity is legally presumed but has not been judicially

determined. However, the fact that there are some differences between two or more individuals does not preclude them from being in sufficiently comparable positions and from having sufficiently comparable interests. The Court finds that with regard to their interest in contesting a status relating to paternity, the applicant and the other parties in question were in an analogous situation for the purposes of Article 14 of the Convention (see, *mutatis mutandis*, *Rasmussen v. Denmark*, no. 8777/79, Commission's report of 5 July 1983, Series A no. 87, p. 24, § 75, and *Mizzi v. Malta*, no. 26111/02, § 131, ECHR 2006-...). The legal system afforded them different treatment in that, unlike the other parties, the applicant could not request the Prosecutor General to challenge the declaration of paternity in the courts in the interests of society. It remains to be ascertained whether this difference had any objective and reasonable justification.

55. For the purposes of Article 14 of the Convention, a difference of treatment is discriminatory if it “has no objective and reasonable justification”, that is, if it does not pursue a “legitimate aim” or if there is “no reasonable relationship of proportionality between the means employed and the aim sought to be realised” (see, among other authorities, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, judgment of 28 May 1985, Series A no. 94, p. 35, § 72). The Court reiterates that the Contracting States enjoy a certain margin of appreciation when assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law (see *Rasmussen v. Denmark*, judgment of 28 November 1984, Series A no. 87, p. 36, § 40).

56. To that end, the Government submitted that in cases of presumed paternity there were *a priori* no proceedings for its determination. Paternity in such cases stemmed directly from the fact that a child was born in wedlock or that a joint declaration of paternity had been made by the parents. Such paternity was entered into the register of births automatically, without material verification. This entailed a risk of mistakes which might become apparent only after the expiry of the time within which individuals with an interest in doing so were entitled to disclaim paternity. It was therefore justified that, as a last resort, the Prosecutor General was entitled to initiate judicial proceedings for rectification of such mistakes even after the expiry of that time-limit. In contrast, the applicant's paternity had been comprehensively examined in a judicial procedure in which he had enjoyed the full range of procedural rights. Once paternity was declared in a judicial decision and that decision became final, the risk of mistakes was lower and, in any event, it was outweighed by the interest of society in preserving the legal relationship thus determined. Furthermore, the Government emphasised that the possibility of requesting the Prosecutor General to challenge a declaration of paternity was not a full remedy in that the person making the request bore the entire burden of proof but had no procedural rights and the decision to accept or reject the request fell within the

exclusive discretionary power of the Prosecutor General. Finally, the Government pointed out that under the new Labour Code, which had taken effect on 1 April 2005, the public prosecution service no longer had the power to contest paternity.

57. The applicant disagreed and claimed that the different treatment which he had received had no acceptable justification. He emphasised that under the domestic legislative framework no consideration at all could, and indeed had, been given to the special features of his case. These included the substantial scientific progress that had been made between the time of the 1970 judgment and the 2004 DNA report and the fact that the parties concerned had no objection to his disclaiming paternity.

58. The Court accepts that, as a matter of principle, the "legitimate interest" in ensuring legal certainty and the security of family relationships and in protecting the interests of children may justify a difference in the treatment of persons with an interest in disclaiming paternity according to whether paternity has been merely presumed or whether it has been determined in a decision that has become final. However, the pursuit of this interest in the present case produced the result that, while the applicant did not have any procedure by which he could challenge the declaration of his paternity, other parties in an analogous situation did. Under the applicable legislative framework, no allowance at all could be made for the specific circumstances of the applicant's case, such as, for example, the age, personal situation and attitude of I. and of the other parties concerned.

59. In the light of the above, the Court finds that there was no reasonable relationship of proportionality between the aim sought to be realised and the absolute means employed in the pursuit of it.

It follows that there has been a violation of Article 14, taken in conjunction with Article 8 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6, TAKEN BOTH ALONE AND IN CONJUNCTION WITH ARTICLES 13 AND 14 OF THE CONVENTION

60. The applicant also complained that the lack of any procedure by which he could challenge the declaration of his paternity constituted a separate violation of his right of access to a court; that for reasons similar to those mentioned above he had been discriminated against in the enjoyment of that right; and that he had no effective remedies in respect of those complaints. He relied on Articles 6, 13 and 14 of the Convention.

Article 6 § 1 of the Convention, in so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...."

A. Admissibility

61. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

62. The Court observes that at the heart of this part of the application is the impossibility for the applicant to challenge his legal paternity on the grounds of new biological evidence and his discriminatory treatment in that respect. The Court has examined these issues above under Articles 8 and 14 of the Convention and has found a violation of these Articles. In view of those findings it finds it unnecessary to examine the facts of the case separately under Article 6 and under Articles 13 and 14, in conjunction with Article 6 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1, TAKEN BOTH ALONE AND IN CONJUNCTION WITH ARTICLE 13 OF THE CONVENTION

63. Lastly, the applicant complained that his inability to challenge the declaration of paternity had ramifications in the sphere of succession law and so constituted a violation of his property rights under Article 1 of Protocol No. 1. He further submitted that he had no effective remedy available, contrary to Article 13 of the Convention.

64. The Government contested those arguments. They submitted that in so far as the applicant did not want I. to inherit from his estate, he had the possibility of disinheriting her. In their view her attitude towards the applicant fell directly within the purview of Article 469a § 1 (b) of the Civil Code, which allowed a descendant to be disinherited if he or she permanently showed no interest in the ascendant. Furthermore, and in any event, the restriction on the applicant's freedom of testamentary disposition was in the public interest, namely promoting cohesion and safeguarding economic stability within families. There was therefore no arguable Convention claim that called for an effective remedy.

65. The applicant submitted that in the circumstances of his case there was no public interest in preserving his legal relationship with I. in the sphere of succession law. The ground for disinheriting under Article 469a § 1 (b) of the Civil Code did not apply to his situation because I. did not have any real opportunity to show an interest in him since he himself currently had no interest in her. She would thus have a well-founded

defence to any attempt to disinherit her and the situation would only be resolved after his death.

66. The Court reiterates that it is not its role to decide in the abstract whether the applicable domestic law is compatible with the Convention or whether the domestic law has been complied with by the national authorities (see *Ringeisen v. Austria*, judgment of 16 July 1971, Series A no. 13, p. 40, § 97). In cases arising from individual applications it must as far as possible examine the issues raised by the case before it (see *The Holy Monasteries v. Greece*, judgment of 9 December 1994, Series A no. 301-A, pp. 30-31, § 55). The relevant part of this application must therefore be examined with reference to its specific circumstances alone.

67. The Court observes that the applicant has not specified how exactly the abstract succession rules affect his property sphere. Nor has it been established that it is impossible to secure a suitable solution to the property aspect of the present situation by alternative means such as an *inter vivos* property arrangement or making out a case for disinheritance.

68. To the extent that this part of the application has been substantiated and raises any issue that is different from that which has been examined above under Article 8 of the Convention, the Court has found no appearance of a violation of the applicant's rights under Article 1 of Protocol No. 1 taken either alone or in conjunction with Article 13 of the Convention. It follows that that the complaints under these provisions are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

70. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

71. The Government contested that claim.

72. The Court accepts that the applicant has suffered damage of a non-pecuniary nature as a result of the State's failure to comply with its positive obligation relating to the applicant's right to respect for his private life. It finds that this non-pecuniary damage is not sufficiently compensated for by the finding of a violation of the Convention.

It also notes that, pursuant to Articles 228 § 1 (d) and 230 § 2 of the Code of Civil Procedure, civil proceedings can be reopened where the Court has found a violation of the requesting party's Convention rights and where serious consequences of the violation are not adequately redressed by the award of just satisfaction.

Having regard to the above considerations and making an assessment on an equitable basis, it awards the applicant EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

73. The applicant also claimed 12,167[1] Slovakian korunas (SKK) for the costs and expenses incurred at the domestic level and SKK 60,897[2] for those incurred before the Court. The latter amount included SKK 19,950[3] for the translation into English of the applicant's observations on the admissibility and merits of the case in reply to those of the Government.

74. The Government contested the claim.

75. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,800 covering costs under all heads.

C. Default interest

76. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* inadmissible the complaint under Article 1 of Protocol No. 1, taken both alone and in conjunction with Article 13 of the Convention;

2. *Declares* admissible the remainder of the application;

3. *Holds* that there has been a violation of Article 8 of the Convention;

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[1] SKK 12,167 is equivalent to approximately EUR 320.
[2] SKK 60,897 is equivalent to approximately EUR 1,600.
[3] SKK 19,950 is equivalent to approximately EUR 525.

4. *Holds* that there has been a violation of Article 14, taken in conjunction with Article 8 of the Convention;

5. *Holds* that there is no need to examine separately the complaint under Article 6, the complaints under Articles 13 and 14, taken in conjunction with Article 6, and the complaint under Article 13, taken in conjunction with Article 8 of the Convention;

6. *Holds*
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros) in respect of non-pecuniary damage and EUR 1,800 (one thousand eight hundred euros) in respect of costs and expenses, to be converted into Slovakian korunas at the rate applicable at the date of settlement, plus any tax that may be chargeable;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President