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

FIRST SECTION

CASE OF MIZZI v. MALTA

(Application no. 26111/02)

JUDGMENT

STRASBOURG

12 January 2006

FINAL

12/04/2006

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 Mizzi v. Malta,

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

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
Mr J. FILLETTI, ad hoc *judge*,

and Mr S. QUESADA, *Deputy Section Registrar*,

Having deliberated in private on 8 December 2005,

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

PROCEDURE

1. The case originated in an application (no. 26111/02) against the Republic of Malta lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Maltese national, Mr Maurice Mizzi ("the applicant"), on 5 July 2002.

2. The applicant was represented by Mrs M. Farrugia, a lawyer practising in St Venera (Malta), and by Mr D. Pannick and Mrs C. Weir, two barristers practising in London. The Maltese Government ("the Government") were represented by their Agent, Mr S. Camilleri, Attorney General.

3. The applicant alleged that he had been denied access to a court with regard to his action for disavowal, that the irrebuttable presumption of paternity applied in his case amounted to a disproportionate interference with his right to respect for his private and family life and that he had been discriminated against in the enjoyment of his rights under Article 8 and/or Article 6 § 1 of the Convention.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1. Mr G. Bonello, the judge elected in respect of Malta, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mr J. Filletti to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

5. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

6. By a decision of 9 December 2004 the Court declared the application admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1936 and lives in Bidnija (Malta).

A. The background of the case

9. The applicant is a well-known businessman in Malta. On 29 December 1963 he married a Maltese national, X, in a Catholic ceremony. In 1966 X became pregnant; at that time she was still living together with the applicant, who was aware of the pregnancy. In March 1967 the applicant and X separated and stopped living together. On 4 July 1967 X gave birth to a child, Y.

10. The applicant states that he had had doubts regarding the paternity of Y and wanted to carry out a blood test, although such a test would not have been conclusive under Maltese law, which did not allow him to institute an action to rebut the legal presumption that he was Y's father. He was registered as the natural father of the child.

11. A few months after Y's birth, X refused to carry out the blood test. This behaviour intensified the applicant's suspicions regarding the child's paternity. He alleged that he distanced himself completely from Y and, although legally obliged to pay maintenance for her until she reached the age of majority, he had no relationship with her. This is disputed by Y (see "D. The statements by Y and by the applicant" below).

12. The applicant legally separated from X on 2 March 1968 by means of a contract of voluntary separation. Subsequently the marriage was annulled by a decree of the Court of Appeal of the Vicariate of the City of Rome on 24 April 1972.

13. According to the applicant's version of events, on an unspecified date after 1993 Y contacted him and volunteered to undergo a blood test. Scientific examinations were carried out in Switzerland and concluded that the applicant was not Y's biological father. However, in a written statement attached to the Government's observations on the merits, Y declared that the DNA test had been carried out in 1990 and not in 1993. She further stated that the results of this test had never been shown to her.

B. The constitutional proceedings before the Civil Court

14. On 1 November 1996 the applicant lodged an application with the Civil Court (First Hall), seeking a declaration that notwithstanding the provisions of the Maltese Civil Code, he had a right to proceed with an action for disavowal of paternity.

15. The applicant alleged that the right to respect for his private and family life included the right to have family relationships governed by biological certainty and not by a legal presumption conflicting with the reality of the facts. He considered that the lack of any remedy in that respect violated Article 8 of the Convention, as interpreted by the Court in the case of *Kroon and Others v. the Netherlands* (judgment of 27 October 1994, Series A no. 297-C).

16. In submissions filed with the Civil Court the applicant also invoked Articles 6 and 14 of the Convention, alleging a potential violation of his right of access to a court and his right not to be discriminated against *vis-à-vis* the mother of the child, the child herself or any third parties who, unlike the betrayed husband, were free to deny legitimacy without being subject to any time-limit.

17. In a judgment of 30 May 1997 the Civil Court allowed the applicant's application. It observed that Articles 70 and 73 of the Civil Code had never allowed him to adduce scientific and genetic evidence to prove that the child borne by his former wife was not in fact his daughter. Therefore, there had been a violation of Article 8 of the Convention.

18. The Civil Court considered that the status of father was intimately linked with private life. Therefore, laws establishing how ties of filiation could be created and dissolved could interfere with the right guaranteed by Article 8 of the Convention. It furthermore observed that national law had never allowed the applicant to adduce scientific evidence in order for the family relationship in question to be governed by biological certainty and not by a legal presumption. In fact, under Article 70 of the Civil Code, as in force at the relevant time, the father could only repudiate paternity on the grounds either of physical impossibility of cohabitation or of legal separation during the possible period of conception. Moreover, the husband could not repudiate a child on the ground of adultery, except where the birth had been concealed from him. As the applicant had been cohabiting with X at the time of Y's conception and had been aware of her birth, no action for disavowal could have been brought within the period of three months from the date of the birth as set forth in the relevant domestic provisions. It was true that the Civil Code had been amended in 1993, and that under the new Article 70 § 1 (d), the husband was also allowed to repudiate a child on the ground of adultery subject to the production of further evidence, including genetic tests, ruling out his paternity of the child. However, under Article 73 of the Civil Code, such an action should have been brought within six

months from the date of the birth, and by 1993 that period had already expired.

19. In the Civil Court's view, such interference could not be justified in terms of paragraph 2 of Article 8 of the Convention. It emphasised that in the case of *Kroon and Others v. the Netherlands* the European Court had stated that respect for family life required that biological and social reality should prevail over a legal presumption. This finding dispensed the Civil Court from ascertaining whether the other rights relied on by the applicant had also been infringed.

C. The proceedings before the Constitutional Court

20. The Attorney General appealed against the judgment of 30 May 1997 to the Constitutional Court. A third-party appeal was also lodged by Y.

21. In a judgment of 15 January 2002 the Constitutional Court allowed the appeals by the Attorney General and Y and set aside the impugned judgment.

22. It observed that even before the 1993 amendments the Civil Code had not precluded the taking of genetic and scientific tests to establish whether a person was the father of a child or not. In fact, Article 73 of the Code simply provided that adultery alone was an insufficient basis for bringing an action to repudiate paternity, the presence of another element being necessary, namely that the birth had been concealed from the person legally designated as the father. Only after this circumstance had been established could the "father" produce other evidence, including scientific material. The reason for this limitation of the husband's right to proceed with an action for repudiation had been the stand in favour of the status of legitimacy, summed up by the presumption "*pater is est quem iustae nuptiae demonstrant*". The *ratio legis* remained the same even after the 1993 amendments, which allowed the husband to repudiate the child on the basis of adultery and scientific tests even if the birth had not been concealed from him (Article 70 § 1 (d) of the Civil Code). In any case, scientific tests alone merely constituted evidence corroborating other elements, and they had never been sufficient and decisive to disavow paternity, the husband being obliged to prove the adultery or the concealment of the birth.

23. The Constitutional Court noted that the applicant was in reality claiming a right to determine paternity uniquely on the basis of biological certainty resulting from scientific proof, independently of any other requirement imposed by the legislator and without any time-limit. It was true that scientific tests, whose results were apparently ascertainable and accessible, could be the most conclusive; however, in the Constitutional Court's view, this was not a good reason to exclude certainty reached by means of other evidence.

24. The Constitutional Court examined whether the domestic law had struck a fair balance between the husband's right to know whether or not he was the child's father and the interests of the child in enjoying certainty as to his or her legal status. It considered that according to today's social trends, the aim of the interference complained of was the protection of children in the enjoyment of their family ties rather than the protection of the status of legitimacy. The issue raised by the applicant concerned a conflict between factual reality and legal certainty, a matter which was the subject of debate in many other countries. The Constitutional Court noted that the *Kroon and Others* judgment did not deny a margin of appreciation to the State authorities and that the European Court had not made a statement on the conformity of the provisions of Dutch law with the Convention, preferring to rule solely on the particular circumstances of the case before it. The contested judgment had simply followed the position taken in the *Kroon and Others* judgment, the facts of which, however, were completely different from those of the present case, in which both X and Y disagreed with the action taken by the applicant and the "social reality" enjoyed by Y corresponded to her birth certificate.

25. The Constitutional Court moreover pointed out that in the case of *Rasmussen v. Denmark* (judgment of 28 November 1984, Series A no. 87) the Court had considered that the introduction of time-limits for the institution of paternity proceedings was justified by the desire to ensure legal certainty and to protect the interests of the child, and had consequently found no violation of Article 8 of the Convention. That approach had subsequently been confirmed by the European Commission of Human Rights in the cases of *B.H. v. Austria* (application no. 19345/92, decision of 14 October 1992) and *M.B. v. the United Kingdom*, concerning the refusal to order a blood test (application no. 22920/93, decision of 6 April 1994), as well as by the Court in the case of *Yildirim v. Austria* ((dec.), no. 34308/96, 19 October 1999).

26. In the light of the above, the Constitutional Court considered that the interest in having biological and social reality prevail over legal presumptions should be balanced against equally valid principles and values, such as the interests of the offspring, the identity of the family nucleus and the stability of society. This vindicated the right of the State to impose, within its margin of appreciation, certain limits on the use of an action to deny paternity, which the Constitutional Court could review only if they amounted to serious interference with the husband's fundamental rights.

27. The Constitutional Court finally observed that the ideal situation was one in which legal certainty corresponded to factual reality. It therefore suggested that the domestic provisions be constantly kept under the legislator's scrutiny to be refined and updated as and when necessary,

taking into account developments in science, changes in the family and social trends.

D. The statements by Y and by the applicant

28. Attached to their observations on the merits, the Government produced a statement by Y, in which she declared that she had used the applicant's name for thirty-seven years and would like to continue to do so for the rest of her life. Y also stated that the applicant used to visit her during the first year of her life; he had provided maintenance for her upbringing and had paid a sum for her wedding expenses. Y had been invited several times to parties at the applicant's house and on one occasion she had been asked to go upstairs to greet the applicant's father. On another occasion, Y had played tennis with the applicant at his private house in Bidnija. At some point between 1990 and 1996 the applicant had invited Y and her son to spend a day at his house by the pool. On that occasion, he had given her son a present.

29. Y declared that she had undergone the blood test in March 1990 at the applicant's request. At that time she had had no doubt that the applicant was her father. Her intentions were based on purely emotional factors and not on financial considerations. Y alleged that she did not believe the applicant's statement that she was not his daughter and added that she had never been shown the results of the DNA test. She felt that the applicant was simply trying to find some justification for the fact that he had not always treated her like a daughter. The reasons behind the applicant's legal actions were probably of a merely financial nature. The allegations made in court had caused Y further suffering.

30. In response to Y's arguments, the applicant produced a written statement in which he declared that, having suspected that his wife was having affairs during their marriage, he had not been happy when he had been informed that X was pregnant. The applicant had separated from X several months before Y's birth and had been informed of the birth a few weeks after it had happened. The applicant had not wanted to sign the declaration of birth and had delayed the matter for months. He had eventually been incorrectly led to believe that as the presumed father, he was the only person who could declare the birth; moreover, pressure had been put on him by X and her father, who had promised that a blood test would be carried out. The applicant had asked whether the blood test could be included as a condition in the contract of separation, but he had abandoned that idea in order not to damage X's reputation. Four months after the signature of the contract of separation, the applicant had been informed that X had changed her mind as to the blood test. He had therefore declared that he would not regard Y as his own daughter.

31. The applicant had included access rights in the separation contract and had actually visited Y during the first year of her life because he had not been sure about the results of the blood test. However, he had stopped the visits when it became clear that the blood test would not be carried out and he had never used his right to take Y to his home. The applicant had not seen Y again until she was about twenty years old, when a friend of his had brought her to one of his parties without informing him beforehand. There had been around one hundred guests at the party. The applicant had not recognised Y on that occasion. She had come to parties organised by the applicant three or four more times, always as an uninvited guest. The applicant did not remember whether he had invited her to greet his father, but pointed out that it had been common for his guests to visit his father, who was living with him.

32. The applicant submitted that he had shown the results of the blood tests to Y; however, he had kept the documents for himself. He would have given her a copy had she so requested.

33. On one occasion, "as a matter of courtesy", the applicant had invited Y for lunch. Y had asked whether she could bring her son and the applicant had replied that that was possible. On that occasion, the applicant and Y had discussed Y's real father's identity.

34. The applicant had not seen Y again after this lunch. She had never been treated as a granddaughter by the applicant's parents and the members of the applicant's family had not had any direct contact with her. She had never attended family parties or family funerals and had not been given the applicant's deceased mother's jewellery (as would be customary in Malta if she were the applicant's daughter). The applicant had never felt like a father to Y and could not see how she could have felt like a daughter to him. They had seen each other a few times in nearly thirty years and always in the company of third persons. Y had never called the applicant "dad".

35. The applicant submitted that he had included maintenance for Y in the contract of separation because he was in any case obliged to pay for it. The applicant had also felt obliged to contribute to Y's marriage expenses, but had not been invited to the wedding.

II. RELEVANT DOMESTIC LAW

A. The action for disavowal brought by the husband

36. Before the 1993 amendments, the relevant Articles of the Maltese Civil Code read as follows:

Article 67

"A child conceived in wedlock is held to be the child of the mother's husband."

Article 70

"The husband can repudiate a child conceived in wedlock

(a) if he proves that during the time from the three hundredth day to the one-hundred-and-eightieth day before the birth of the child, he was in the physical impossibility of cohabiting with his wife on account of his being away from her, or some other accident; or

(b) if he proves that during the said time he was legally separated from his wife ..."

Article 72 § 1

"The husband may not repudiate a child on the ground of adultery, except where the birth shall have been concealed from him, in which case he shall be allowed to prove, even in the action for disavowal, both the adultery and the concealment, as well as all other circumstances tending to show that he is not the father of the child ..."

Article 73

"Where it is competent to the husband to bring an action to disown a child, he must bring such action

(a) within three months from the day of the birth, if he was then in Malta;

(b) within three months of his return to Malta, if he was absent at the time of the birth;

(c) within three months of the discovery of the fraud, if the birth was concealed from him ..."

37. From 1 December 1993 (see Act XXI of 1993) a number of amendments were made to the Civil Code. In particular, to the cases in which the husband may repudiate a child conceived in wedlock was added the following (Article 70 § 1 (d) of the Civil Code):

"if he proves that during the ... time [from the three hundredth day to the one hundred and eightieth day before the birth of the child] the wife had committed adultery or that she had concealed the pregnancy and the birth of the child, and further produces evidence of any other fact (which may also be genetic and scientific tests and data) that tends to exclude such paternity."

38. Moreover, the periods set down in Article 73 of the Civil Code were raised to six months.

B. Impeachment of the legitimacy of a child by other persons

39. By Article 77 of the Civil Code, the legitimacy of a child born in wedlock may be impeached by any interested person if he or she proves that, during the time from the three hundredth day to the one hundred and eightieth day before the birth of the child, it was physically impossible for the husband to have been cohabiting with his wife. This action is not subject to any time-limit.

40. According to the case-law of the domestic courts, a child has the right to challenge his or her paternity without restrictions when the status attributed by the birth certificate conflicts with the factual reality (see the judgment of the Court of Appeal of 14 January 1952 in the case of *Antonio Scerri Gauci v. Dr G. Scicluna*).

C. The inheritance and maintenance rights of legitimate children

41. By Articles 616 and 620 of the Civil Code, the applicant's daughter is entitled, as a legitimate descendant, to inherit at least one-third of the applicant's estate, which is due in full ownership and cannot be encumbered by any burden or condition. As a consequence of the amendments introduced in the Civil Code by Act XVIII of 2004, which entered into force on 1 March 2005, if the applicant dies without having made a will or if his will is declared invalid for any reason, Y, as his only child, will be entitled to his entire estate.

42. Until the child' reached the age of majority, the applicant was obliged to provide maintenance for his daughter. Should the latter in future become unable to maintain herself, alone or with the help of her husband and children, the applicant would once again become liable to the obligation of maintenance.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

43. In their observations of 29 March 2005 on the merits the Government submitted that the application was out of time, that the applicant's complaints under Articles 6 and 14 of the Convention had not been properly brought before the domestic courts, that the applicant had failed to adduce evidence showing his interest in the case and that he could not claim to be a "victim", within the meaning of Article 34 of the Convention, of the facts complained of.

44. The Government alleged, in particular, that the applicant should have lodged his application within six months from 30 April 1987, the date of the entry into force of the European Convention Act. Moreover, the applicant had carried out acts which were incompatible with the wish to disavow Y. He had acknowledged that he was the father of the child born of his wife and had agreed to have access rights and to pay his former wife a monthly sum "for their common daughter".

45. The applicant challenged the Government's arguments. He alleged that the situation complained of was a continuing one, that the application had been lodged within six months from the date of the delivery of the final domestic decision, that he had raised all his complaints in substance before the domestic courts and that by reason of a legal presumption the authorities had been obliged to enter his name on Y's birth certificate. Furthermore, he considered it "surprising" that these objections had not been raised by the Government in their main submissions on the admissibility and merits of the case.

46. The Court reiterates that, in accordance with Rule 55 of the Rules of Court, any plea of inadmissibility must, in so far as its character and the circumstances permit, be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application submitted under Rule 51 or 54, as the case may be (see *K. and T. v. Finland* [GC], no. 25702/94, § 145, ECHR 2001-VII, and *N.C. v. Italy* [GC], no. 24952/94, § 44, ECHR 2002-X). In the present case, in their written observations at the admissibility stage the Government objected that the applicant had lodged his constitutional application more than six months after the adoption of the 1993 amendments and that he had failed to bring an action to determine the paternity of Y. In its decision of 9 December 2004 on admissibility the Court held that the final decision, within the meaning of Article 35 § 1 of the Convention, was the Constitutional Court's judgment of 15 January 2002. It therefore considered that the application could not be rejected as being out of time. It moreover held that the accessibility and effectiveness of an action to determine paternity was linked to the substance of the applicant's complaint under Article 6 § 1 of the Convention.

47. The Court notes that the pleas of inadmissibility put forward in the observations of 29 March 2005 on the merits were not made by the Government in their written statements before the adoption of the decision of 9 December 2004. These new submissions referred to events that had occurred before the application was lodged with the Court. There are no exceptional circumstances which would have absolved the Government from the obligation to raise all their preliminary objections before the Court's decision as to the admissibility of the application (see *Prokopovich v. Russia*, no. 58255/00, § 29, 18 November 2004).

48. Consequently, the Government are estopped from raising the preliminary objections set out in their observations of 29 March 2005 at the

present stage of the proceedings. The Government's objections must therefore be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

49. The applicant submitted that he had not been able to have his action for disavowal of paternity examined by a domestic tribunal. He relied on Article 6 § 1 of the Convention, which, in so far as relevant, provides:

> "1. In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing ... by [a] ... tribunal ..."

A. The parties' submissions

1. The Government

50. The Government first submitted that Article 6 was not applicable to the facts of the present case. They alleged that this provision only covered disputes over rights which existed at domestic level. However, the applicant, who had not been separated from his wife and had known about the birth of Y, did not have any right to disavow his paternity of the child. The Government referred, on this point, to the cases of *Nylund v. Finland* ((dec.), no. 27110/95, ECHR 1999-VI) and *Yildirim v. Austria* ((dec.), no. 34308/96, 19 October 1999).

51. The Government furthermore observed that the applicant had never filed any case in Malta to determine the paternity of Y. He could not therefore claim that he had been denied access to a court in respect of such an action. The applicant had merely lodged a constitutional application on 1 November 1996, more than three years after the enactment of the 1993 amendments and more than six months after the date on which Y had agreed to undergo the DNA test.

52. The Government noted that the "concealment of birth" requirement was a measure that favoured legitimacy and the stability of the family and maintained a proper balance between various rights in cases such as the present one in which the husband chose to continue cohabitating and having relations with the wife despite his knowledge that the wife was having other relationships. In such circumstances, it was proportionate to provide that the husband should accept children whom he might not have fathered as his own. In the Government's view, the effects of the concealment requirement were very similar to those of the "doctrine of acknowledgment" under

Danish law, as examined by the Court in the case of *Rasmussen v. Denmark* (cited above).

53. Under Maltese law, adultery was a ground for separation, which could have been proved by any means. Had the applicant sought a separation from his wife, he could have done so at any time, even after the birth of Y. In the event of refusal to undergo blood tests to determine paternity, the domestic court would have taken this factor into account and considered it to be an indication of adultery. However, the applicant had chosen a completely different course of action: he had acknowledged the child and signed a contract of consensual separation with X, in which adultery was not mentioned.

54. Moreover, the concealment requirement was not relevant in the applicant's case: even if such a requirement was not provided for by law, an action for disavowal would have had little prospect of success, as the applicant did not have any proof of his wife's adultery or – before the DNA test – of the fact that Y had not been fathered by him. Consequently, the applicant was affected only by the fact that the law fixed a time-limit for bringing an action to deny paternity and required proof of adultery before admitting scientific evidence.

55. The Government emphasised that in the domestic proceedings the applicant had failed to produce the DNA test or any evidence of X's adultery. In the absence of any proof of the factual basis of his allegations, he could not be considered a victim of the facts complained of.

56. In any case, there were good reasons for establishing a legal presumption that a child born or conceived in wedlock was the offspring of the husband, for requiring certain preconditions before admitting evidence in rebuttal and for subjecting an action for disavowal to time-limits.

57. In relation to the latter point, the Government observed that in the case of *Rasmussen v. Denmark* (cited above) the Court had accepted such time-limits, which were provided for by practically all European countries' legislation on the matter, in order to protect the children's right to legal certainty as to their status.

58. Furthermore, it should be taken into account that when Y was born, DNA testing had not been available. The only available test at the time had been the ABO blood grouping test, which could in some cases definitely rule out paternity, but left the matter open in most cases. It would be unreasonable to reopen settled issues of paternity every time a new scientific test was developed.

59. In the Government's opinion, the three-month limitation period – which had recently been extended to six months – was not unreasonably short. In fact, the law took into account the fact that both infidelity and reconciliation after adultery were not uncommon. It was therefore wise to rule out the possibility of an action for disavowal being brought at any time when the spouses might have had a fight. In order to avoid "conditional

reconciliations", Maltese law had chosen to give to the husband a limited time to decide whether to forgive his wife and forget his doubts as to the paternity of his children.

60. Finally, as jealousy was a recurring theme in life, the Maltese legislator had protected wives and their children from the antics of jealous husbands or fathers. In particular, before 1993 the husband had been required to prove both the adultery and the concealment of birth before adducing other evidence (including scientific tests) showing that a child born in wedlock was not his. After 1993, he had been required to prove either adultery or concealment in order to be allowed to produce other evidence. The more rigid requirements before 1993 had been attributable to the fact that scientific tests at that time had been less reliable.

61. In view of the foregoing, the Government concluded that the preconditions for bringing an action for disavowal were necessary and acceptable limitations on the right of access to a tribunal. They referred to the case of *Mikulić v. Croatia* (no. 53176/99, ECHR 2002-I), in which the Court had concluded that leaving a child born on 25 November 1996 in a state of prolonged uncertainty as to her personal identity constituted a failure to secure her right to respect for her private life.

2. The applicant

62. In the applicant's submission, the concealment requirement and the limitation period under the relevant provisions of the Civil Code constituted an unjustified and disproportionate interference with his right of access to a court.

63. He observed that he had brought proceedings before the Civil Court, seeking a declaration that those legal limitations were contrary to Articles 6, 8 and 14 of the Convention. He had also sought a declaration that he had a right to proceed with an action for disavowal of paternity notwithstanding the limits laid down in the Civil Code.

64. As to the Government's argument that he could not claim to be the victim of the alleged violations as no evidence of the wife's adultery or of the DNA test had been adduced, the applicant noted that his complaint in Strasbourg concerned the preconditions for bringing an action for denial of paternity in the domestic legal system. He therefore submitted that for the purposes of the present application there was no need for the Court to consider evidence of paternity or adultery.

65. The applicant observed that the Government had acknowledged, in substance, that the six-month limitation period for bringing an action for disavowal and the concealment requirement were *prima facie* interferences with his right to access to court. However, the Government had failed to provide adequate justification satisfying the test of proportionality under Article 6 of the Convention.

66. In the first place, the Government had not explained why an absolute six-month requirement, allowing for no exceptions, was needed. After the 1993 amendments, it was that time-limit which had prevented the applicant, who was able to comply with the substantive requirements of an action for disavowal, from bringing his case before a court.

67. The applicant submitted that in the case of *Mikulić v. Croatia*, cited by the Government, the Court had emphasised the importance, for a child, of the elimination of uncertainty as to the identity of her natural father. It was, however, similarly important for the applicant that the erroneous legal presumption that he was Y's father should be eliminated.

68. The delay in challenging paternity had not been due to the applicant's lack of action, but to the operation of the concealment requirement, which until 1993,would have been an obstacle to any action for disavowal. When the law had been amended and the requirement in question was removed, the inflexible six-month time-limit had prevented the applicant from instituting court proceedings. Against this background, the fact that he had waited until 1 November 1996 to lodge his constitutional application was irrelevant.

69. The applicant considered that the reasons advanced by the Government in order to justify the concealment requirement were not convincing. It had not been explained, in particular, why before 1993 it had been necessary to prove not only the wife's adultery but also the concealment of the birth. This requirement had prevented a husband who had evidence of his wife's adultery from instituting proceedings to deny paternity where there was still common marital life or where the wife had decided to reveal the birth. This rendered an action for disavowal practically impossible in many cases and overlooked the role played in children's life by the biological father. Nor had the Government explained why proof of adultery, where properly established, was not sufficient to protect wives and children from groundless allegations. Furthermore, there was no valid reason why the Maltese courts did not have the power to compel the parties to undergo blood tests to establish paternity. It was also to be noted that the power to invite the parties to undergo such tests and to draw inferences from any refusal had been introduced only with the 1993 amendments. It was therefore a course of action which had never been open to the applicant.

70. The applicant also submitted that his case was distinguishable from those of *Nylund v. Finland* and *Yildirim v. Austria*, cited by the Government in support of their claim that Article 6 was not applicable. Unlike Mr Nylund, the applicant would have had, under domestic law, a right to disavow his paternity of the child had the concealment requirement and the six-month time-limit not existed. As to Mr Yildirim, the latter had had the possibility, not impaired by any concealment requirement, of bringing an action to deny paternity within one year from the birth of his child, but had omitted to do so.

B. The Court's assessment

1. Applicability of Article 6 § 1 of the Convention

71. The Court notes that, according to its case-law, Article 6 § 1 secures the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect only (see *Osman v. the United Kingdom*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3166, § 136, and *Cordova v. Italy (no. 1)*, no. 40877/98, § 48, ECHR 2003-I). This right extends only to disputes ("*contestations*") over "civil rights and obligations" which can be said, at least on arguable grounds, to be recognised under domestic law (see, among other authorities, *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, pp. 46-47, § 81, and *Powell and Rayner v. the United Kingdom*, judgment of 21 February 1990, Series A no. 172, p. 16, § 36). The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. The outcome of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see, for instance, *Werner v. Austria*, judgment of 24 November 1997, *Reports* 1997-VII, p. 2507, § 34).

72. In the present case, the applicant wished to bring an action for disavowal with regard to Y, his wife's daughter. Under the relevant domestic provisions, a husband could repudiate a child conceived in wedlock under certain circumstances, which were listed in Articles 70 and 72 of the Maltese Civil Code. According to the latter provision, an action for disavowal was admissible if the husband could prove both the adultery of his wife and the concealment of the birth, as well as any other circumstances tending to show that he was not the father of the child (see paragraph 36 above).

73. It is not contested that the birth of Y was not concealed from the applicant. However, the relevant Maltese law was amended in 1993. Under the new rules (Article 70 § 1 (d) of the Civil Code), evidence of adultery and of any other fact tending to rule out paternity was sufficient to bring an action for disavowal (see paragraph 37 above).

74. In the light of the above, the Court considers not only that the domestic legal system allowed a husband to deny paternity of the offspring of his wife, but also that after the 1993 amendments a person in the applicant's situation was, in principle, capable of bringing such an action with reasonable prospects of success. In the Court's view, the fact that a

time-limit precluded the applicant from benefiting from the 1993 amendments did not impair the actual existence of the right in the domestic legal system. Such a time-limit was only a procedural precondition for having access to the domestic courts.

75. The present case is therefore distinguishable from those of *Nylund* (cited above), in which the Court found that the domestic law did not provide for any "right to have mere biological paternity examined by scientific methods", and *Yildirim* (cited above), in which the domestic law did not confer on a husband a right to have an action contesting legitimacy brought by the public prosecutor.

76. In the Court's view, having regard to the scientific evidence obtained in Switzerland (see paragraph 13 above), it cannot be said that the applicant's allegations that he was not the biological father of Y were manifestly devoid of substance. Under these circumstances, the Court considers that the right claimed by the applicant to deny paternity was at least arguable and that the dispute that he wished to bring before the domestic courts, which was directly decisive for this right, was genuine and serious. Finally, the Court reiterates that an action contesting paternity is a matter of family law; on that account alone, it is "civil" in character (see *Rasmussen*, cited above, pp. 12-13, § 32).

77. It follows that Article 6 of the Convention applies to the facts of the present case. It remains to be ascertained whether there was an interference with the applicant's right to bring an action for disavowal before the domestic courts.

2. Whether there was an interference with the applicant's right of access to a court

78. The Court notes that at the time of Y's birth, any action which the applicant could have brought in order to deny paternity would have had little prospect of success, as he would not have been able to prove one of the elements required by former Article 72 § 1 of the Civil Code, namely that the birth of the child had been concealed from him. After the 1993 amendments, when, as noted above, the concealment requirement became only one of the alternative preconditions for bringing such an action, the applicant was time-barred from raising his claim before a court. In fact, in accordance with Article 73(a) of the Civil Code, a husband wishing to disavow a child had to bring his judicial claim within six months from the date of the birth (see paragraphs 36 and 38 above). As Y was born on 4 July 1967, by 1993 this period had expired.

79. It is true that the applicant was able to lodge an application with the Civil Court, seeking a declaration that notwithstanding the provisions of the Civil Code, he had a right to proceed with an action for disavowal of paternity (see paragraphs 14-19).

80. However, it is to be recalled that the Civil Court's decision in his favour was set aside by the Constitutional Court (see paragraphs 20-27 above), and that a degree of access to a court limited to the right to ask a preliminary question cannot be considered sufficient to secure the applicant's "right to a court", having regard to the rule of law in a democratic society (see *Cordova*, cited above, § 52, and, *mutatis mutandis*, *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 58, ECHR 1999-I). In this connection, it should be borne in mind that, in order for the right of access to be effective, an individual must have a clear and practical opportunity to challenge an act interfering with his rights (see *De Jorio v. Italy*, no. 73936/01, § 45, 3 June 2004, and *Bellet v. France*, judgment of 4 December 1995, Series A no. 333-B, p. 42, § 36). In the present case, as a result of the wording of the relevant provisions of the Civil Code coupled with the Constitutional Court's refusal to grant the applicant leave to bring an action for disavowal, Mr Mizzi was deprived of the possibility of obtaining a judicial determination of his claim that he was not Y's biological father.

81. In these circumstances, the Court considers that there has been an interference with the applicant's right of access to a court.

82. This right is not absolute, but may be subject to implied limitations. Nonetheless, such limitations must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, they will not be compatible with Article 6 § 1 if they do not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, among many other authorities, *Cordova*, cited above, § 54; *Khalfaoui v. France*, no. 34791/97, §§ 35-36, ECHR 1999-IX; and *Papon v. France*, no. 54210/00, § 90, ECHR 2002-VII; see also a recapitulation of the relevant principles in *Fayed v. the United Kingdom*, judgment of 21 September 1994, Series A no. 294-B, pp. 49-50, § 65).

3. Aim of the interference

83. The Court reiterates that the rules on time-limits for bringing judicial claims are undoubtedly designed to ensure the proper administration of justice and compliance with, in particular, the principle of legal certainty (see *Pérez de Rada Cavanilles v. Spain*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3255, § 45, and *Miragall Escolano and Others v. Spain*, no. 38366/97, § 33, CEDH 2000-I). Furthermore, they may protect the interests of the child, who has a right to have his or her uncertainty as to his or her personal identity eliminated without unnecessary delay (see *Rasmussen*, cited above, p. 15, § 41, and *Mikulić*, cited above, § 65).

84. The aim pursued by the concealment requirement is less apparent. However, the Court is prepared to accept as a starting-point for its analysis

that it might have served interests similar to those protected by the statutory time-limit.

85. It remains to be determined whether the consequences for the applicant were proportionate to the legitimate aims pursued.

4. Proportionality of the interference

86. The Court observes that it must assess the contested interference with the right of access to a court in the light of the particular circumstances of the case (see *Waite and Kennedy*, cited above, § 64). It reiterates in this connection that its task is not to review the relevant law and practice *in abstracto*, but to determine whether the manner in which they were applied to or affected the applicant gave rise to a violation of the Convention (see, *mutatis mutandis*, *Padovani v. Italy*, judgment of 26 February 1993, Series A no. 257-B, p. 20, § 24). In particular, it is not the Court's task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (see *Cordova*, cited above, § 57).

87. As observed above (see paragraphs 78-80), in the present case the applicant never had the possibility, with reasonable prospects of success, of bringing an action for disavowal. Until 1993 he was prevented from doing so by the concealment requirement, whereas after the 1993 amendments any such judicial claim would have been time-barred.

88. The Court has already accepted that under certain circumstances, the institution of time-limits for bringing an action for disavowal may serve the interests of legal certainty and the interests of the children (see *Rasmussen*, cited above, p. 15, § 41). Therefore, the consequent limitations on the presumed father's right of access to a court are not, as such, incompatible with the Convention.

89. However, the rules in question, or the application of them, should not prevent litigants from making use of an available remedy (see *Osu v. Italy*, no. 36534/97, § 32, 11 July 2002). The Court is of the opinion that in the present case the practical impossibility of denying paternity from the date of Y's birth until the present day has impaired the essence of the applicant's right to a court. Therefore, the interference complained of has put an excessive burden on the applicant, failing to strike a fair balance between the latter's legitimate interest in obtaining a judicial ruling as to his presumed paternity and the protection of legal certainty and of the interests of the other persons involved in his case.

90. The Court emphasises that the above finding does not conflict with the conclusions reached in the case of *Mikulić v. Croatia*, cited by the Government. It notes that Ms Mikulić, a child born out of wedlock, wished to obtain a judicial decision with regard to her real father's identity.

However, her judicial claim was not decided within a reasonable time. In the absence of procedural measures to compel the presumed father to undergo a DNA test and of alternative means enabling an independent authority to determine the paternity claim speedily, the Court found that there had been a violation of Ms Mikulić's right to have her uncertainty as to her personal identity eliminated without unnecessary delay (see *Mikulić*, cited above, §§ 56-66). The position of Ms Mikulić is therefore not comparable to that of Y, a child born in wedlock who did not wish to institute court proceedings to determine her real father's identity and whose status as a legitimate child could never be successfully challenged by the applicant.

91. In the light of the foregoing, the Court finds that there has been a violation of the applicant's right of access to a court as guaranteed by Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

92. The applicant alleged that the legal presumption of the husband's paternity of the child, combined with the absence of any domestic remedy by which he could have challenged it, violated his right to respect for his private and family life, guaranteed by Article 8 of the Convention.

This provision reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. The parties' submissions

1. The Government

93. Referring to the Commission's decisions in the cases of *X v. the United Kingdom* (no. 5269/71, Yearbook 15, pp. 564-74, and no. 2991/64, Yearbook 15, pp. 478-500), the Government alleged that the relationship between the applicant and his 29-year-old daughter did not constitute "family life". They moreover observed that there had been no interference by the State with the applicant's private life with X and Y. Mr Mizzi himself had declared that he had developed a friendship with Y and that he "hoped" that she was his daughter.

94. In the Government's submission, the potential or rather theoretical reciprocal right of maintenance between the applicant and Y and the inheritance rights of the latter did not constitute interferences with the applicant's private life, but only with his possessions. They therefore concerned family property and not family life.

95. The Government furthermore challenged the applicant's argument that Article 8 guaranteed the right not to be compelled to establish relationships with other human beings. Such a right would deny the whole basis of the family. Moreover, the interests of society, of the child and of legal certainty might justify the establishment of a parental relationship with a person who was not the biological father. A legal presumption of this kind would be incompatible with the Convention only when, as in the case of *Kroon and Others* (cited above), it clashed with social reality and did not benefit anyone.

96. In the present case, Y had always enjoyed the "social reality" of being the applicant's daughter and it would be detrimental to her to take away her identity and expel her from the applicant's family.

97. In the light of the above, the Government submitted that, even assuming that Article 8 could apply to the facts of the present case, the interference complained of was provided by law and necessary in a democratic society to secure legal certainty and to protect the rights of others.

2. The applicant

98. The applicant alleged that the amendments introduced in the Civil Code in 1993 were aimed at protecting persons in a position comparable to his; however, no derogation was provided for in respect of the six-month time-limit set forth in Article 73 of the Civil Code, thus preventing him from instituting an action on the basis of adultery and scientific tests. The legislation in question had failed to ensure, in his case, that biological reality prevailed over the legal assumption of legitimacy, to which the Maltese legal system attributed disproportionate importance. Moreover, this legal assumption had serious financial consequences: even if not biologically related to the applicant, Y would inherit one-third of his estate and could not be treated less favourably than any other children that the applicant might have in future. Thus, the presumption of paternity had not only emotional but also financial consequences, which were disproportionate and extended substantially beyond the point at which Y' had reached the age of majority.

99. The applicant moreover observed that the case-law quoted by the Government in order to show that there was no family life between him and Y and that there had been no interference on the part of the State with his rights under Article 8 was not relevant. In that connection, he noted that he was not seeking to establish family life with a relative who might otherwise

be considered independent, but to distance himself from a relationship which had been established by the Maltese Civil Code and which had existed since the birth of his presumed daughter.

100. In any case, the institution of paternity proceedings was clearly covered by Article 8 of the Convention. In fact, respect for private life, which was intended to mean the right to establish relationships with other human beings, should also comprise the right not to be compelled to establish such relationships. In the present case, the applicant had, against his wishes, been publicly compelled to be associated "with a woman with whom he ha[d] no biological or social relationship".

101. In the applicant's view, the Government had failed to explain how the requirements for bringing an action for disavowal were strictly necessary to meet a pressing social need. The recognition of biological reality would not cause Y any prejudice other than the loss of inheritance rights. She would not be "expelled" from the applicant's family as she had never been part of it.

B. The Court's assessment

1. Applicability of Article 8 of the Convention

102. The Court has already examined cases in which a husband wished to institute proceedings to contest the paternity of a child born in wedlock. In those cases the question was left open whether paternity proceedings aimed at the dissolution in law of existing family ties concerned the applicant's "family life" because of the finding that, in any event, the determination of the father's legal relations with his putative child concerned his "private life" (see *Yildirim*, cited above, and *Rasmussen*, cited above, § 33).

103. In the instant case the applicant sought, by means of judicial proceedings, to rebut the legal presumption of his paternity of Y on the basis of biological evidence. The purpose of those proceedings was to determine his legal relationship with Y, who was registered as his daughter.

104. Accordingly, the facts of the case fall within the ambit of Article 8 of the Convention.

2. General principles

105. The Court reiterates that the essential object of Article 8 is to protect the individual against arbitrary action by public authorities. There may in addition be positive obligations inherent in ensuring effective "respect" for private or family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the

sphere of the relations of individuals between themselves (see *Mikulić*, cited above, § 57).

106. However, the boundaries between the State's positive and negative obligations under this provision do not lend themselves to precise definition. The applicable principles are nonetheless 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 of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation (see *Keegan v. Ireland*, judgment of 26 May 1994, Series A no. 290, p. 19, § 49, and *Kroon and Others*, cited above, p. 56, § 31).

107. The Court reiterates that its task is not to substitute itself for the competent domestic authorities in regulating paternity disputes at national level, but rather to review under the Convention the decisions that those authorities have taken in the exercise of their power of appreciation (see *Mikulić*, cited above, § 59, and *Hokkanen v. Finland*, judgment of 23 September 1994, Series A no. 299-A, p. 20, § 55). It will therefore examine whether the respondent State, in handling the applicant's action for disavowal, has complied with its positive obligations under Article 8 of the Convention.

3. Compliance with Article 8 of the Convention

108. The applicant did not dispute that the impossibility of bringing an action for disavowal was "in accordance with the law". Indeed, his complaint was based on the assumption that Articles 72 and 73 of the Civil Code, as in force before and after the 1993 amendments, prevented him from bringing any successful claim before the national courts. The Court has agreed in substance with this analysis and concluded that the wording of the relevant domestic provisions, coupled with the Constitutional Court's refusal to grant leave to bring such an action, deprived the applicant of the possibility of obtaining a judicial determination of his claim that he was not Y's biological father (see paragraphs 80 and 87 above).

109. The Court notes that the applicant and Y underwent a blood test in Switzerland in order to establish whether he was 'her biological father. According to the applicant, the results of this test showed that he was not Y's father (see paragraph 13 above). However, the applicant never had the possibility of having the results of the test in question examined by a tribunal. It was only after the 1993 amendments that he would have had a right under domestic law to contest his paternity of Y on the basis of scientific evidence and proof of adultery had he lodged the action within six months after 'her birth.

110. The Court notes that the legal systems of the Contracting States have produced different solutions to the problem which arises when the requirements for substantiating a claim for disavowal are fulfilled only after the expiry of the prescribed period. In some States, in certain exceptional

cases a court may grant leave to institute proceedings out of time (see *Rasmussen*, cited above, § 24). In others the authority to do so is vested in the public prosecutor (see *Yildirim*, cited above).

111. In the applicant's case, the only means of redress was apparently to lodge a constitutional application seeking a declaration that notwithstanding the provisions of the Civil Code, the husband had a right to proceed with an action for disavowal of paternity. The Government failed to indicate any other effective domestic remedies by which to obtain the reopening of the time allowed for bringing such an action. Had the Civil Court and the Constitutional Court accepted the application lodged by the applicant to that effect, they would have adequately secured his interests, as he had legitimate reasons to believe that Y might not be his daughter and wished to challenge in court the legal presumption that he was her father. However, his application was rejected and, as noted above, the applicant was never afforded the possibility of bringing, with reasonable prospects of success, an action aimed at rebutting the presumption in question.

112. The Court is not convinced by the Government's argument that such a radical restriction of the applicant's right to institute proceedings to deny paternity was "necessary in a democratic society". In particular, it has not been shown why society as a whole would benefit from such a situation. The potential interest of Y in enjoying the "social reality" of being the daughter of the applicant cannot outweigh the latter's legitimate right to have at least the opportunity to deny paternity of a child who, according to scientific evidence, was not his own. As to the interests of legal certainty, the Court cannot but reiterate the observations developed under Article 6 § 1 of the Convention (see paragraphs 87-90 above).

113. According to the Court's case-law, a situation in which a legal presumption is allowed to prevail over biological reality might not be compatible, even having regard to the margin of appreciation left to the State, with the obligation to secure effective "respect" for private and family life (see, *mutatis mutandis*, *Kroon and Others*, cited above, § 40).

114. The Court considers that the fact that the applicant was never allowed to contest his paternity of Y was not proportionate to the legitimate aims pursued. It follows that a fair balance has not been struck between the general interest in the protection of legal certainty of family relationships and the applicant's right to have the legal presumption of his paternity reviewed in the light of biological evidence. Therefore, despite the margin of appreciation afforded to them, the domestic authorities have failed to secure respect for the applicant's private life, to which he is entitled under the Convention.

115. Accordingly, the Court finds that there has been a violation of Article 8.

116. This finding dispenses the Court from establishing whether this provision has also been violated on account of the reciprocal right of

maintenance existing between the applicant and Y and the 'inheritance rights enjoyed by the latter.

IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 6 § 1 AND ARTICLE 8

117. The applicant complained of discrimination on the ground of his status as the legally presumed father in the exercise of his rights under Article 6 § 1 and/or Article 8 of the Convention. He invoked Article 14 of the Convention, which reads as follows:

> "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. The parties' submissions

1. The Government

118. The Government submitted that the applicant's complaint was similar to that examined by the Court in the case of *Rasmussen v. Denmark* (cited above). They further observed that under Maltese law the circumstances under which any interested person could challenge a child's legitimacy without a specific time-limit were rather exceptional (in particular, when it had been physically impossible for the husband to have cohabitated with his wife or when the child was born three hundred days after the dissolution or annulment of the marriage). These circumstances had not occurred in the present case and the applicant had therefore not been treated differently from other persons. Moreover, an action by an "interested person" would be limited by the provisions of the Civil Code protecting the status of a child conceived or born in wedlock and the status assigned by the birth certificate.

119. The Government also submitted that the applicant was not in a situation analogous to that of the other persons in relation to whom he alleged to have been discriminated against. In any event, the time-limits for bringing an action for disavowal were aimed at protecting legal certainty, at avoiding the possibility that a child might have his or her paternity determined a long time after birth and at preventing the action from being used by the husband as a tool for blackmailing the child or the mother. Any difference in treatment was therefore objectively and reasonably justified.

120. As to the applicant's allegation that in other Contracting States (notably Austria and Denmark at the time of the *Rasmussen* judgment) it was possible to bring an action for disavowal after the legally prescribed

time-limit, the Government pointed out that leave for bringing the action out of time was subject to strict conditions. There was no evidence that in other Contracting States a father would be allowed to deny paternity if he obtained scientific evidence twenty-seven years after the birth of the child and wished to start proceedings six years after obtaining that evidence. It was shown by a report on "The establishment and consequences of maternal and paternal affiliation" that the average limitation period for bringing an action for disavowal in Europe was one year (notably in Switzerland, Austria and Italy) and that a six-month period was by no means exceptional (being applied, for instance, in France, Poland and Spain). The report also indicated that in some countries (such as Germany, Switzerland, Austria and Hungary) the time started to run from the date on which the husband became aware of the circumstances suggesting that he might not be the father of the child. However, such a provision would not have benefited the applicant, who had already had doubts as to his paternity of Y at the time of 'her birth.

121. In view of the above, the Government submitted that in providing for a shorter period for the husband to bring an action for disavowal, the national authorities had not exceeded their margin of appreciation. They had treated differently situations which were not analogous and which could not form the basis for a claim of discrimination.

2. The applicant

122. The applicant alleged that contrary to other individuals in an analogous situation (namely X, Y and Y's real father), he was subject, in bringing an action for disavowal, to the limitation period set forth in Article 73 of the Civil Code. If Y wished to bring an action to determine her paternity, she would be in an even more preferential position, as she would not be required to establish any of the grounds set out in Article 70 § 1 and Article 77 of the Civil Code and would not be subject to any limitation period.

123. As to the Government's contention that 'the paternity of Y could not be challenged by reason of the irrebuttable presumption that a person conceived in wedlock possessed a status in conformity with his or her birth certificate, the applicant submitted that it was far from clear that Y possessed such a status. In fact, she had never been treated as a child by the applicant and had never been acknowledged as such by his family.

124. The applicant considered that the impugned difference in treatment had no justification. The importance of legal certainty and the need to prevent blackmail applied equally to all the parties and not only to the presumed father. In any event, the Government had failed to explain why it was necessary to apply a limitation period which was inflexible, subject to no exceptions and shorter than those applied by many other High Contracting Parties. Moreover, in many countries the period did not start to

run from the birth, as in Malta, and leave could be granted to bring the action outside the normal requirements.

125. The applicant lastly pointed out that in a judgment of 2 June 2005 the Spanish Constitutional Court had declared that the one-year time-limit provided for by domestic law was unconstitutional in circumstances where it prevented a husband from bringing an action for disavowal where he had obtained proof that a child born in wedlock was not his only after the expiry of that period. This conclusion had been considered a corollary of the principle of the dignity of the person, both from the perspective of the right of the son to know his identity as well as from that of paternity as a projection of the person.

B. The Court's assessment

1. Applicability of Article 14

126. As the Court has consistently held, Article 14 complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter (see, among many other authorities, *Van Raalte v. the Netherlands*, judgment of 21 February 1997, *Reports* 1997-I, p. 184, § 33, and *Karlheinz Schmidt v. Germany*, judgment of 18 July 1994, Series A no. 291-B, p. 32, § 22).

127. The Court has found that the facts of the case fall within the ambit of Article 6 § 1 and Article 8 of the Convention (see paragraphs 77 and 104 above). Moreover, it has found a breach of these two provisions (see paragraphs 90 and 115 above).

128. Accordingly, Article 14 is applicable in conjunction with Article 6 § 1 and Article 8.

2. Compliance with Article 14 of the Convention

129. The Court observes that in the present case, in bringing an action for disavowal the applicant was subject to time-limits which did not apply to other "interested parties". In particular, pursuant to Article 73(a) of the Civil Code, a husband had to bring an action to disavow a child within three months from the date of the birth. This period was extended to six months in 1993 (see paragraphs 36 and 38 above). On the contrary, any person interested may impeach the legitimacy of a child born in wedlock by means of an action which is not subject to any time-limit (see Article 77 of the

Civil Code, paragraph 39 above). Moreover, the domestic courts have held that a child has the right to challenge his or her paternity without restrictions when the status assigned by the birth certificate conflicts with the factual reality (see paragraph 40 above).

130. The Court reiterates that Article 14 safeguards individuals who are "placed in analogous situations" against discriminatory differences of treatment (see *Rasmussen*, cited above, p. 13, § 35).

131. The Court accepts that there might have been differences between the applicant and the other interested parties – namely X, Y and Y's biological father. However, the fact that there are some differences between two or more individuals does not preclude them from being in sufficiently comparable positions and interests. The Court considers that with regard to their interest in contesting a status relating to paternity, the applicant and "other interested parties" were in analogous situations within the meaning 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).

132. According to the Court's case-law, a difference in treatment is discriminatory for the purposes of Article 14 if it "has no objective and reasonable justification", that is if it does not pursue a "legitimate aim" or if there is not a "reasonable relationship of proportionality between the means employed and the aim sought to be realised" (see, among other authorities, *Pla and Puncernau v. Andorra*, no. 69498/01, § 61, ECHR 2004-VIII). In this connection, the Court observes that the Convention is a living instrument, to be interpreted in the light of present-day conditions (see, among other authorities, *Fretté v. France*, no. 36515/97, § 34, ECHR 2002-I, and *Johnston and Others v. Ireland*, judgment of 18 December 1986, Series A no. 112, pp. 24-25, § 53).

133. In the *Rasmussen* case, the Court, having regard to the lack of common ground in the Contracting States' legislation and to the margin of appreciation enjoyed by the domestic authorities, held that the institution of different time-limits between husbands and wives could be justified by the desire to ensure legal certainty and to protect the interests of the child, and that it did not exceed a reasonable relationship of proportionality (*Rasmussen*, cited above, pp. 15-16, §§ 41-42).

134. The present case is, however, distinguishable from that of *Rasmussen*, in which the applicant had an opportunity to disavow the child during the five years subsequent to the birth and within twelve months after he had become cognisant of the circumstances affording grounds for contesting paternity. As noted above (see paragraphs 80, 87 and 108), Mr Mizzi never had such an opportunity. The rigid application of the time-limit, coupled with the Constitutional Court's refusal to allow an exception, deprived him of the possibility of exercising the rights guaranteed by

Articles 6 and 8 of the Convention, which, on the contrary, were and still are enjoyed by the other interested parties.

135. Under these circumstances, the Court cannot conclude that the difference in treatment complained of was proportionate to the aims sought to be achieved.

136. It follows that there has been a violation of Article 14, read in conjunction with Article 6 § 1 and Article 8 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

137. 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

138. The applicant alleged that his inability to disavow his paternity of Y and his participation in the subsequent domestic litigation had caused him anxiety, frustration and distress. He sought 3,500 Maltese liras (MTL – approximately 8,431 euros (EUR)) for non-pecuniary damage. He referred, in that connection, to the sums awarded by the Court in the cases of *Keegan v. Ireland* (judgment of 26 May 1994, Series A no. 290, p. 23, § 68) and *L. v. the Netherlands* (§ 48, no. 45582/99, ECHR 2004-IV).

139. The Government considered that the applicant's claim was "misplaced" and that the finding of a violation would constitute sufficient just satisfaction. They submitted that it was likely that anyone who tried to reverse a declaration of paternity which he had himself made would suffer some anxiety and frustration, as a normal side-effect of legal proceedings. Moreover, the cases cited by the applicant concerned denial of access to a natural daughter and not disavowal of paternity.

140. The Court finds, in the circumstances, that the applicant must have suffered feelings of frustration, uncertainty and anxiety which cannot be compensated solely by the finding of a violation. Making an assessment on an equitable basis, as required by Article 41, the Court awards the applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

141. The applicant sought the reimbursement of the costs incurred before the Court, which, according to the bills he had produced, amounted to MTL 36,826.34 (approximately EUR 88,718).

142. The Government considered that the amount claimed by the applicant was manifestly excessive and that it had no relation to normal legal costs in human-rights litigation in Malta. Moreover, the applicant had not provided any proof that the expenses incurred in Malta had been taxed according to law. Without being obliged to do so, he had engaged the services of celebrity London barristers, whose fees were notoriously higher than those of Maltese lawyers. Under these circumstances, the Government were of the opinion that the applicant should bear most of the fees he had incurred and that a fair assessment of the costs and expenses should be made in accordance with the legal aid rates applicable in Strasbourg proceedings.

143. According to the Court's established case-law, an award can be made in respect of costs and expenses incurred by the applicant only in so far as they have been actually and necessarily incurred and are reasonable as to quantum (see, *inter alia*, *Belziuk v. Poland*, judgment of 25 March 1998, *Reports* 1998-II, p. 573, § 49, and *Craxi v. Italy*, no. 34896/97, § 115, 5 December 2002).

144. The Court considers the amount claimed to be excessive. It is therefore appropriate to reimburse only in part the costs and expenses alleged by the applicant (see, *mutatis mutandis*, *Nikolova v. Bulgaria*, no. 31195/96, § 79, ECHR 1999-II; *Sakkopoulos v. Greece*, no. 61828/00, § 59, 15 January 2004; and *Cianetti v. Italy*, no. 55634/00, § 56, 22 April 2004). Having regard to the elements at its disposal and on the basis of an equitable assessment, the Court awards the applicant EUR 40,000 under this head, plus any tax that may be chargeable on this amount.

C. Default interest

145. 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

1. *Dismisses* unanimously the Government's preliminary objections;

2. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;

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

4. *Holds* unanimously that there has been a violation of Article 14 of the Convention, taken in conjunction with Article 6 § 1 and Article 8;

5. *Holds* by six votes to one
   (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, the following amounts, to be converted into Maltese liras at the rate applicable at the date of settlement:
      (i) EUR 5,000 (five thousand euros) in respect of non-pecuniary damage;
      (ii) EUR 40,000 (forty thousand euros) in respect of costs and expenses;
      (iii) any tax that may be chargeable on the above amounts;
   (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;

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

Done in English, and notified in writing on 12 January 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President