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

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 was denied access to a court with regard to his action for disavowal, that the irrefutable presumption of paternity applied in his case amounted to a disproportionate interference with his right for respect of private and family life and that he had been discriminated 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 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, which, however, would not have been conclusive under Maltese law. The latter did not enable the applicant 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 suspicions of the applicant regarding his paternity. He alleged that he distanced himself completely from Y and, although legally obliged to pay maintenance for her until she reached the majority age, he had no relationship with her. This is disputed by Y (see below, under "D. The statements by Y and by the applicant").

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, on an unspecified date after 1993 Y contacted him and volunteered to undergo a blood test. Scientific exams 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 had declared that the DNA test was done 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 filed an application before the Civil Court (First Hall) requesting a declaration that notwithstanding the provisions of the Maltese Civil Code, he had a right to proceed with an action of rejection of paternity.

15. The applicant alleged that the right to respect for his private and family life included the right that family relationship be regulated 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 this respect violated Article 8 of the Convention, as interpreted by the Court in the case of *Kroon and others v. the Netherlands* (see judgment of 27 October 1994, Series A no. 297-C).

16. In a note of submissions the applicant also invoked Articles 6 and 14 of the Convention, alleging a potential violation of his rights of access to a court and not to be discriminated *vis-à-vis* the mother of the child, the child herself or third parties which, contrary to the betrayed husband, were free to deny legitimacy without being submitted to any time-limit.

17. In a judgment of 30 May 1997, the Civil Court accepted the applicant's request. It observed that Articles 70 and 73 of the Civil Code never allowed the applicant to prove, by means of scientific and genetic proof, that the child borne by his former wife was not truly 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 the laws establishing how the 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 never allowed the applicant to bring forward scientific proof in order for the family relationship to be regulated by biological certainty and not by a legal presumption. In fact, according to Article 70 of the Civil Code, as in force at the relevant time, the father could only repudiate paternity on the grounds 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 was cohabiting with X at the time of the conception of Y and was aware of her birth, no action for disavowal could have been brought within the time-limit of three months from the day of the birth set forth by the relevant domestic provisions. It was true that the Civil Code had been amended in 1993, and that according to new Article 70 § 1 (d), the husband was allowed to repudiate a child also on the basis of adultery and of the production of further evidence, including genetic tests, excluding paternity. However, under Article 73 of the Civil Code, such an action should have been introduced within six months from the day of the birth, and in 1993 this time-limit 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 prevailed over a legal presumption. This finding dispensed the Civil Court from ascertaining whether the other rights invoked 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 presented by Y.

21. In a judgment of 15 January 2002, the Constitutional Court accepted the appeals of the Attorney General and of Y and revoked the impugned decision.

22. It observed that even before the 1993 amendments the Civil Code did not preclude 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 this Code simply provided that adultery alone was insufficient to file an action to repudiate paternity, the concurrence of another element being needed, namely that the birth had been concealed from the person legally designated as the father. Only after this circumstance had taken place could the "father" produce other evidence, including scientific material. The *ratio* of this limitation on the husband's right to proceed with an action of repudiation had been the stand in favour of the status of legitimacy, resumed by the presumption "*pater id est quem iuxte 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 to him (Article 70 § 1 (d) of the Civil Code). In any case, scientific tests alone were only evidence corroborating other elements, and they had never been sufficient and decisive to negate 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 from any other requirement imposed by the legislator and without any time-limit. It was true that scientific tests, 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 orientation, the aim of the interference complained of was the protection of the 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 subject of debate in many other countries. The Constitutional Court noted that the Kroon 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 the Dutch law with the Convention, preferring to pronounce itself solely on the particular circumstances of the case before it. Now, the appealed decision had simply followed the teachings in the Kroon judgment, whose facts, however, were completely different from those of the present case, in which both X and Y disagreed with the action carried on by the applicant and the "social reality" enjoyed by Y corresponded to her act of birth.

25. The Constitutional Court moreover recalled that in the case of *Rasmussen v. Denmark*, the European 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 consequently found no violation of Article 8 of the Convention (see judgment of 28 November 1984, Series A no. 87). This approach was subsequently confirmed by the Commission 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* (application no. 34308/96, decision of 19 October 1999).

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

27. The Constitutional Court finally observed that the ideal situation was the one in which legal certainty corresponded with factual reality. It therefore suggested that the domestic provisions be constantly kept under the legislator's scrutiny to be refined and updated according to the necessity, taking into account the developments in science and the changes in the family and social orientations.

D. The statements by Y and by the applicant

28. Attached to their observations on the merits, the Government produced a statement by Y, where 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 provided maintenance for her upbringing and paid a sum for her wedding expenses. Y was invited several times for parties at the applicant's house and on one occasion she was asked to go upstairs to greet the applicant's father. On another occasion, Y played tennis with the applicant in his private house in Bidnija. At some time between 1990 and 1996 the applicant invited Y and her son to spend a day at his house by the pool. On that occasion, he gave her son a present.

29. Y declared that she underwent the blood test in March 1990 at the applicant's request. At that time she 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 that she was never shown the results of the DNA test. She felt that the applicant was just trying to find a justification for the fact that he did not always treat her like a daughter. The reasons behind the applicant's legal actions were probably of a merely financial nature. The allegations made in court caused Y further suffering.

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

31. The applicant included visiting rights in the separation contract and actually visited Y during her first year of life because he was not sure about the results of the blood test. However, he stopped the visits when it became clear that the blood test would not be carried out and he never used his right of taking Y to his home. The applicant saw Y again only when she was about twenty years old and a friend of his brought her to one of his parties without informing him beforehand. There were around one hundred guests

at the party. The applicant did not recognise Y on that occasion. She came 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 visiting his father, who was living with him, was common amongst his guests.

32. The applicant submitted that he showed the results of the blood tests to Y; however, he 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 invited Y for lunch. Y asked whether she could bring her son and the applicant replied that it was possible. On that occasion, the applicant and Y discussed Y's real father's identity.

34. The applicant did not see Y again after this lunch. She was never treated as a granddaughter by the applicant's parents and the members of the applicant's family did not have any direct contact with her. She never attended family parties or family funerals and was not given the applicant's deceased mother's jewellery (as it would be customary in Malta if she were the applicant's daughter). The applicant never felt like a father to Y and could not see how she could have felt like a daughter to him. They have seen each other a few times in nearly thirty years and always in the company of third persons. Y 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 also felt obliged to contribute to Y's marriage expenses, but was not 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, amongst 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 time-limits set forth in Article 73 of the Civil Code were raised up to six months.

B. The impeachment of the legitimacy of a child by other persons

39. According to Article 77 of the Civil Code, the legitimacy of a child born in wedlock may be impeached by any person interested if he or she proves that, during the time from the three-hundredth day to the one-hundredth-and-eightieth day before the birth of the child, the husband was in the physical impossibility of 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 act of birth 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. According to 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 an Act XVIII of 2004, 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's majority, the applicant was obliged to provide maintenance for his daughter. Should the latter become in future 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 on the merits of 29 March 2005, 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 tribunals, that the applicant had failed to bring 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 introduced his application within six months from 30 April 1987, date of the entry into force of the European Convention Act. Moreover, the applicant had made acts which were incompatible with the wish to disavow Y. He had acknowledged that he was the father of the child born from his wife and had agreed to have visiting rights and to pay to 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 was introduced within six months from the date of the delivery of the domestic final decision, that he had raised the substance of all his complaints before the domestic courts and that by reason of a legal presumption the authorities were bound to enter his name on Y's birth certificate. Furthermore, he considered it "surprising" that these exceptions

were not raised by the Government in their main submissions on the admissibility and merits of the case.

46. The Court recalls that, according to 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. et 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 introduced his constitutional claim more than six months after the adoption of the 1993 amendments and that he had failed to introduce an action to determine the paternity of Y. In its decision on the admissibility of 9 December 2004, 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. Therefore, it 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 on the merits of 29 March 2005 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 contained 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 considered that he could not have his action of rejection of paternity examined by a domestic tribunal. He invoked Article 6 § 1 of the Convention, which, insofar as relevant, reads as follows:

> "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 the domestic level. Now, the applicant, who was not separated from his wife and knew about the birth of Y, did not have any right to disavow paternity. The Government referred, on this point, to the cases of *Nylund v. Finland* (see decision of 29 June 1999, no. 27110/95) and *Yildirim v. Austria* (see decision of 19 October 1999, no. 34308/96).

51. The Government furthermore observed that the applicant 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 limited himself to introducing a constitutional application on 1 November 1996, which was more than three years after the adoption of the 1993 amendments and more than six months after the date on which Y agreed to undergo the DNA test.

52. The Government noted that the "concealment of birth" requirement was a measure favouring legitimacy and the stability of the family, which kept a proper balance between various rights in cases like the present one in which the husband chose to continue cohabitating and having relations with the wife despite his knowledge that the wife was maintaining other relationships. In such circumstances, it was proportionate to provide that the husband should accept as his children which he might not have fathered. In the Government's view, the effects of the concealment requirement were very similar to those of the "doctrine of acknowledgment" under Danish law, examined by the Court in the case of *Rasmussen v. Denmark* (see judgment of 28 November 1984, series A no. 87).

53. Under Maltese law, adultery was a ground for separation, which could have been proven with all 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 case of refusal to undergo blood tests to determine paternity, the domestic tribunal would have taken this factor into account and considered it as an element showing adultery. However, the applicant chose a completely different course of action: he acknowledged the child and signed with X a contract of consensual separation 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 the law, an action for disavowal would have had little prospects 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 generated by him. Consequently, the

applicant was affected only by the fact that the law fixed a time-limit for the action of denial of paternity and required the proof of the adultery before admitting scientific evidence.

55. The Government emphasized that in the domestic proceedings the applicant failed to produce the DNA test and the evidence of the adultery of X. 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 would be good reasons to establish a legal presumption that a child born or conceived in wedlock is the offspring of the husband, to require certain preconditions before allowing proof in rebuttal and to subject 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 accepted such time-limits, which are provided for by practically all the European 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 was not available. The only available test at the time was the ABO blood grouping test, which could in some cases definitely exclude parenthood, but left the matter open in most cases. Now, it would be unreasonable to reopen settled issues of parenthood every time a new scientific test is produced.

59. In the Government's opinion, the three-month time-limit – which was lately extended to six months – was not unreasonably short. In fact, the law took into account that both infidelity and reconciliation after adultery are not uncommon facts. It was therefore wise to rule out the possibility of an action for disavowal being brought at any time the spouses might have had a fight. In order to avoid "conditional reconciliations", Maltese law decided to give to a husband a limited time within which he had 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 was required to prove both the adultery and the concealment of birth before adducing other evidence (including scientific tests) showing that the child born in wedlock was not his. After 1993, he should prove either the adultery or the concealment in order to be able to produce other evidence. The more rigid requirements before 1993 were attributable to the fact that the scientific tests were, at that time, less reliable.

61. In the view of the above, the Government concluded that the preconditions required for bringing an action for disavowal were necessary and acceptable limitations to the right of access to a tribunal. They referred to the case of *Mikulić v. Croatia* (no. 53176/99, judgment of 7 February

2002, ECHR 2002-I), in which the Court 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 private life.

2. The applicant

62. According to the applicant, 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 brought proceedings before the Civil Court seeking a declaration that these legal limitations were contrary to Articles 6, 8 and 14 of the Convention. He also sought a declaration that he had a right to proceed with an action for rejection of paternity notwithstanding the limits fixed in the Civil Code.

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

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

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

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 was eliminated.

68. The delay in challenging paternity was not due to the applicant's lack of action, but to the operation of the concealment requirement which would have been, until 1993, an obstacle to any action for disavowal. When the law was amended and the said requirement was removed, the inflexible six-month time-limit prevented the applicant to start court proceedings. Against

this background, the fact that he waited until 1 November 1996 to raise his constitutional claim 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 was necessary to prove not only the adultery of the wife but also the concealment of the birth. This requirement prevented a husband who had evidence of the adultery of his wife from instituting proceedings for denial of paternity each time there was still common marital life or when the wife had decided to reveal the birth. This rendered, in many cases, an action for disavowal practically impossible and overlooked the role played in children's life by the biological father. Nor did the Government explain why the proof of the adultery, properly applied, 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 was introduced only with the 1993 amendments. It was therefore a course 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 to claim that Article 6 was not applicable. Differently from Mr Nylund, the applicant would have had, under domestic law, a right to disavow paternity had the concealment requirement and the six-month time-limit not existed. As to Mr Yildirim, the latter had the possibility, not impaired by any concealment requirement, to bring an action denying 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 introduce 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 all 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 to the applicant. However, the Maltese law was amended in 1993. Under the new rules (Article 70 § 1 (d) of the Civil Code), evidence of the adultery and of any other fact tending to exclude paternity was sufficient to bring an action for disavowal (see paragraph 37 above).

74. In the light of the above, the Court considers that not only did the domestic legal system allow a husband to deny paternity of the offspring of his wife, but also that after the 1993 amendments a person in the situation of the applicant was, in principle, capable of introducing 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 existence itself of the right in the domestic legal system. Such time-limit was only a procedural pre-condition for having access to the domestic tribunals.

75. The present case is therefore distinguishable from those of *Nylund v. Finland* - in which the Court found that the domestic law did not provide any "right to have mere biological paternity examined by scientific methods" - and of *Yildirim v. Austria* - where the domestic law did not confer to 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 to deny paternity claimed by the applicant was at least arguable and that the dispute that he wished to bring before the domestic tribunals, directly decisive for this right, was genuine and serious.

Finally, the Court recalls that an action contesting paternity is a matter of family law; on that account alone, it is "civil" in character (see *Rasmussen v. Denmark*, judgment of 28 November 1984, Series A no. 87, 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 had been an interference with the applicant's right to bring an action for disavowal before the domestic courts.

2. The existence of 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 prospects of success, as he would have not been able to prove one of the elements required by the then 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 pre-conditions for introducing such an action, the applicant was time-barred from bringing his claim before a tribunal. In fact, according to Article 73(a) of the Civil Code, the husband wishing to disavow should bring his judicial claim within six months from the day of the birth (see paragraphs 36 and 38 above). As Y was born on 4 July 1967, in 1993 this time-limit had expired.

79. It is true that the applicant could file an application before the Civil Court, seeking a declaration that notwithstanding the provisions of the Civil Code, he had a right to proceed with an action of rejection of paternity (see paragraphs 14-19).

80. However, it is to be recalled that the Civil Court's favourable decision was revoked 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, following the wording of the relevant provisions of the Civil Code coupled with the Constitutional Court's refusal to grant the applicant leave for introducing 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 reminder of the relevant principles in *Fayed v. the United Kingdom*, judgment of , Series A no. , pp. 49-50, § 65).

3. Aim of the interference

83. The Court recalls that the rules on time-limits for introducing 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 might 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 v. Croatia*, no. 53176/99, § 65, ECHR 2002-I).

84. The aim pursued by the concealment requirement is less apparent. However, the Court is ready 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 recalls that it must assess the contested interference with the right to 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 respect 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 (*Cordova*, cited above, § 57).

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

88. The Court had already accepted that under certain circumstances, the institution of time-limits for the introduction of an action for disavowal might serve the interests of legal certainty and the interests of the children (see *Rasmussen*, cited above, p. 15, § 41). Therefore, the consequent limitations of the right to access to court of the presumed father 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 day of Y's birth until today 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, thus failing to strike a fair balance between the latter's legitimate interest of having a judicial ruling over his presumed paternity and the protection of the 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 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 paternity of the husband, combined with the absence of any domestic remedy by which he could have challenged it, violated his right for respect of 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 cases of *X v. the United Kingdom* (application no. 5269/71, *Yearbook*, Vol. 15, pp. 564-574 and application no. 2991/64, *Yearbook*, Vol. 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 has been no interference by the State in the applicant's intimate life with X and Y. Mr Mizzi himself declared that he had developed a friendship with Y and that he "hoped" that she was his daughter.

94. According to the Government, the potential or rather theoretical reciprocal right of maintenance between the applicant and Y and the inheritance rights of the latter do not constitute interferences with the applicant's private life, but only with his patrimony. They therefore concern 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 the society, of the child and of legal certainty might justify the establishment of relationships of parenthood with a person which was not the biological father. A legal presumption of this kind would be incompatible with the Convention only when, like in the

case of *Kroon and Others v. the Netherlands* (see judgment of 27 October 1994, Series A no. 297-C), it clashed with social reality and did not benefit anyone.

96. In the present case, Y always enjoyed the "social reality" of being the applicant's daughter and it would be detrimental for 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 which were in a position comparable to his; however, no derogation was provided for the six-month time-limit set forth in Article 73 of the Civil Code, thus preventing him from introducing an action based on adultery and scientific tests. This legislation failed to ensure, in his case, that the biological reality prevailed over the legal assumption of legitimacy, to which the Maltese legal system attributed a disproportionate importance. Moreover, this legal assumption had serious financial consequences: even if not biologically related to the applicant, Y will inherit one third of his estate and could not be treated less favourably than other children that the applicant may have in future. Thus, the presumption of paternity has not only emotional, but also financial consequences, which are disproportionate and extend substantially beyond Y's 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 was no interference on the part of the State with his rights guaranteed by Article 8 was not relevant. In this respect, he noted that he did not seek to establish family life with a relative who might otherwise be considered independent, but to distance himself from a relationship established by the Maltese Civil Code and which existed since the birth of the 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, intended as 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 was, against his wish, 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 failed to explain how the requirements for bringing an action for disavowal were strictly necessary to

meet a pressing social need. The recognition of the biological reality would not cause to Y any detriment other than the loss of the inheritance rights. She would not be "expelled" from the applicant's family as she had never been a 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 the 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" (*Yildirim v. Austria* (dec.), no. 34308/96, 19 October 1999; 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 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; *Kroon and others v. the Netherlands*, judgment of 27 October 1994, Series A no. 297-C, 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 the

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; *Hokkanen v. Finland*, judgment of 23 September 1994, Series A no. 299-A, p. 20, § 55). The Court will therefore examine whether the respondent State, in handling the applicant's paternity action, has complied with its positive obligations under Article 8 of the Convention.

3. Compliance with Article 8 of the Convention

108. The applicant does not dispute that the impossibility of bringing an action for disavowal was "in accordance with the law". Indeed, his complaint is 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 tribunals. The Court has substantially agreed with this analysis and concluded that the wording of the relevant domestic provisions, coupled with the Constitutional Court's refusal to grant leave for introducing 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 had carried out a blood test in Switzerland in order to establish whether the applicant was Y's 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 the applicant would have had a right under domestic law to contest the paternity on the basis of scientific evidence and of proof of adultery had he lodged the action within six months after Y's birth.

110. The Court notes that the legal systems of the Contracting States have produced different solutions to the problem which arises when the circumstances substantiating a claim for disavowal are fulfilled only after the expiry of the time-limit. In some States, in certain exceptional cases a court may grant leave to institute proceedings out of time (*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 introduce a constitutional claim seeking a declaration that notwithstanding the provisions of the Civil Code, the husband had a right to proceed with an action of rejection of paternity. The Government failed to indicate other effective domestic remedies to obtain the reopening of the time-limit. Had the Civil Court and the Constitutional Court accepted this request, they would have adequately secured the interests of the applicant who had legitimate reasons to believe that Y might not be his daughter and wished to challenge in court the legal presumption of his paternity. However, this

request was rejected and, as noted above, the applicant was never afforded the possibility of introducing, 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 the society as a whole would benefit from such a situation. The potential interest of Y to enjoy of the "social reality" of being the daughter of the applicant cannot outweigh the latter's legitimate right of having at least one occasion to reject the 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, the 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*, cited above, § 40).

114. The Court considers that the fact that the applicant was never allowed to disclaim paternity was not proportionate to the legitimate aims pursued. It follows that a fair balance has not been struck between the general interest of 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 the biological evidence. Therefore, despite the margin of appreciation afforded to them, the domestic authorities have failed to secure to the applicant the respect for his private life, to which he is entitled under the Convention.

115. Thus, the Court finds that there had been a violation of Article 8.

116. This finding dispenses the Court from establishing whether this provision has been violated also by the reciprocal right of maintenance between the applicant and Y and the latter's inheritance rights.

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

117. The applicant complained about a discrimination on the ground of his status of 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 might challenge a child's legitimacy without a specific time-limit are rather exceptional (in particular, when the husband had been in the physical impossibility of cohabitating with his wife or when the child was born three hundred days after the dissolution or annulment of the marriage). These circumstances did not occur in the present case and the applicant was therefore not treated differently from other persons. Moreover, the action of an "interested person" would be limited by the provisions of the Civil Code protecting the status of child conceived or born in wedlock and the status attributed by the act of birth.

119. The Government also submitted that the applicant was not in a situation analogous to that of the other persons with reference to whom he alleged to have been discriminated. In any event, the time-limits for the action for disavowal were aimed at protecting legal certainty, at avoiding that a child might have his or her paternity determined a long time after birth and at preventing the action being used as a tool for the blackmailing of the child or of the mother by the husband. 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 file an action for disavowal outside the legally stipulated time-limit, the Government pointed out that leave for exercising the action out of time was subject to strict conditions. Nothing showed 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 time-limit for filing an action for disavowal in Europe was one year (notably in Switzerland, Austria and Italy) and that a six-months period was by no means exceptional (it was so, for instance, in France, Poland and Spain). The report also indicated that in some countries (e.g., Germany, Switzerland, Austria and Hungary) the time-limit 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 to the applicant, who had doubts as to his fatherhood already at the time of Y's birth.

121. In view of the above, the Government submitted that in providing a shorter time-limit for the action for disavowal brought by the husband the national authorities did not exceed their margin of appreciation. They treated differently situations which were not analogous and which could not form the basis of 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 subjected, in introducing 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 discover 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 Articles 70 § 1 and 77 of the Civil Code and would not be subject to any limitation period.

123. As to the Government contention that Y's paternity could not be challenged by reason of the operation of the irrefutable presumption that a person conceived in wedlock should possess a status in conformity with his or her act of birth, 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 difference in treatment complained of lacked any justification. The importance of legal certainty and the need to prevent blackmailing equally applied 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 time-limit which was inflexible, subject to no exceptions and shorter than those applied by many other High Contracting Parties. Moreover, in many countries the time-limit 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 finally 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 from bringing an action for disavowal a husband who had obtained proof that the child born in wedlock was not his only after the expiry of the said time-limit. 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 the configuration 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 fell within the ambit of Articles 6 § 1 and 8 of the Convention (see paragraphs 77 and 104 above). Moreover, the Court found a breach of these two provisions (see paragraphs 90 and 115 above).

128. Accordingly, Article 14 can apply in conjunction with Articles 6 § 1 and 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, according to Article 73(a) of the Civil Code, a husband should bring an action to disown a child within three months from the day of the birth. This time-limit 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 an action which is not subject to any time-limit (see Article 77 of the Civil Code, paragraph 39 above). Moreover, the domestic courts had held that a child has the right to challenge his or her paternity without restrictions when the status attributed by the act of birth conflicts with the factual reality (see paragraph 40 above).

130. The Court recalls 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 does not overlook 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 exclude that they might be in sufficiently comparable positions and interests. The Court considers that with regard to the interest of contesting a paternity status, the applicant and the “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, 14 July 2004). 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 absence of a common ground in the Contracting States' legislation and to the margin of appreciation of the domestic authorities, held that the institution of different time-limits between husbands and wives could be justified by the desire of ensuring legal certainty and of protecting 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, where 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 cognizant 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 had deprived him of the exercise of the rights guaranteed by Articles 6 and 8 of the Convention, which were and still are, on the contrary, 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 had been a violation of Article 14, read in conjunction with Articles 6 § 1 and 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 and his participation in the subsequent domestic litigation had caused him anxiety, frustration and distress. He requested 3,500 Maltese Liras (Lm – approximately 8,431 Euros (EUR)) for non-pecuniary damage. He referred, in this respect, to sums granted by the Court in the cases of *Keegan v. Ireland* (see judgment of 26 May 1994, Series A no. 290, § 68) and *Lebbink v. the Netherlands* (see judgment of 1 June 2004, § 48, no. 45582/99).

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

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 sustained before the Court, which, according to the bills he had produced, amounted to Lm 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 with the normal legal costs in Human Rights litigations in Malta. Moreover, the applicant did not provide 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 are 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 the 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; *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 Articles 6 § 1 and 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 liri 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