

2010/07/08 - PL.ÚS 15/09: PATERNITY CONTESTATION

HEADNOTES

The right to protection of private and family life pursuant to Article 10 Section 2 of the Charter and Article 8 of the Convention prevents the public authorities from arbitrary interference with such an intimate sphere of each and every individual as represented by relations between parents and a child. Those relations amount to the most natural expression of human identity and the right of a democratic and free society must respect their existence. Neither the substance nor the nature of family relations is primarily based on law; the law merely awards protection to their real-life existence. Such protection cannot be ensured solely by an obligation to adhere to certain principles on the side of public authorities. The state is, at the same time, obliged to enact legislation that will ensure legal recognition of family relations and will determine the content of such relations both in relations among the family members and relations towards third parties.

The requirement of the agreement between the legally determined and the biological parent cannot be held absolute. The legal relation of the father and child does not amount to a mechanical reflection of the existence of a biological relationship since in time even if such biological relation is absent such a social and emotional tie can develop between the legally determined father and the child that from the point of view of the right to protection of private and family life this relation will be within the ambit of legal protection. In such a case further duration of legal relations will be dependent on more factors among which the best interests of the child will have an important role - pursuant to Article 3 para. 1 of the Convention on the Rights of the Child such an interest has to be the primary concern in decision-making activity of public authorities while, however, the child has the right to know its parents conferred by Article 7 para. 1 of the above Convention. However, the interest of the biological father who is not awarded the status of legal father and is seeking such a status cannot be denied as irrelevant nor can the interest of the legal father who is not a biological father and is contesting his paternity be dismissed. The right to the protection of private and family life of the mother of the child must also be assessed.

The assessment of the compliance of the Act or of another legal regulation in proceedings pursuant to Section 64 and subs. of the Act No. 182/1993 Coll., on the Constitutional Court in its latest wording is not reflected merely in sphere of the validity of the legal regulation but also in the sphere of the applicability of the relevant regulation. The Constitution itself does not restrict the protection of fundamental rights and freedoms in the case when the grounds for their infringement rest in the application of unconstitutional legal norm merely to the annulment of such legal norm by the Constitutional Court but assumes that the conclusions of the Constitutional Court will be reflected in relation to the application of such norm by public authorities. The potential consequence in the form of non-applicability of the Act relates to the cases when the Constitutional Court notes collision of an Act with constitutional order and the

relevant derogatory reason affects the legal status of an individual with respect to the fundamental rights and freedoms. Establishing a later date for annulment of the contested provision may not lead to the conclusion that the ordinary courts are obliged to apply the concerned provisions in the extent in which it is affected by the derogatory reason should as a result of such application a possibility arise of interference with a fundamental right or with freedom of a party to the proceedings.

**CZECH REPUBLIC
CONSTITUTIONAL COURT
JUDGMENT**

IN THE NAME OF THE CZECH REPUBLIC

The Constitutional Court Panel consisting of Pavel Rychetský, President of the Court and of Justices František Duchoň, Vlasta Formánková, Vojen Güttler, Pavel Holländer, Ivana Janů, Vladimír Kůrka, Dagmar Lastovecká, Jiří Mucha, Jiří Nykodým, Miloslav Výborný, Eliška Wagnerová, and Michaela Židlická ruled on the petition filed by Z. S. born on February 3, 1972, residing at No. 2896/37 Telečská street in Jihlava, represented by Mr. Jan Valihrač, Mgr., an attorney at law, residing at No. 13 Žižkova street in Jihlava and on the Second Panel of the Constitutional Court on annulment of Section 57 para. 1 of Act No. 94/1963 Coll., on Family in the wording of its latest reading with the Chamber of Deputies of the Parliament of the Czech Republic and the Senate of the Parliament of the Czech Republic as parties to the proceedings as follows:

Provisions of Section 57 para. 1 of Act No. 94/1963 Coll., on Family are deemed annulled as of December 31, 2011.

REASONING

I. Summary of the Petition

A. Circumstances Leading to the Submission of the Constitutional Complaint Recorded under file number II. ÚS 405/09

1. In a timely and duly submitted constitutional complaint, recorded under file number II. ÚS 405/09 the petitioner sought to have the judgment of the Supreme Court of the Czech Republic dated December 17, 2008, file number Cdo 1493/2008-69, the judgment of the Regional Court in Brno dated October 11, 2007, file number 13 Co 375/2006-35, and the judgment of the District Court in Jihlava dated August 2, 2006, file number 21 C 36/2006-14 quashed by the Constitutional Court of the Czech Republic on the grounds of the alleged infringement of fundamental rights of the petitioner conferred by Article 10 para. 2 and Article 11 para. 1 and 39 of the Charter of Fundamental Rights and Basic Freedoms (hereafter only as “the Charter”) and by Articles 6, 8 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter only “the Convention”). The petitioner further sought to have Section 57 para. 1 of Act No. 94/1963 Coll., on Family, in the wording of its latest reading annulled in part, namely the wording of “within six months”.

2. The petitioner in his constitutional complaint alleged that based on the statutory marital presumption of paternity pursuant to Section 51 para. 1 of the Act on Family he was recorded as father of L. S., born on February 5, 2004. However, in October 2004 the spouse of the petitioner requested that he move out of the matrimonial home. The petitioner maintains he failed to comprehend the request of his spouse due to several facts including the recent birth of their son L. as well as due to the plans of the married couple to build a residential home for the use of the family. In November the petitioner found out that his spouse had been involved in an extramarital affair with another man for the period of at least two years. When the wife of the petitioner left the matrimonial home in December 2004 while cleaning the wardrobe used by both spouses the petitioner came by a negative of a camera film partly containing family images and partly images related to the extramarital affair of the petitioner's spouse and her lover. The petitioner assumed a suspicion that he was not the biological father of the child born in February. The suspicion was further based on his absence from the matrimonial home at the time of the conception due to a business trip. The petitioner decided to undertake a DNA test with the accredited company Generi Bioetch Ltd. The test confirmed that the petitioner was not the biological father of L. S.

3. The petitioner also stated in his petition that in the course of the divorce proceedings his spouse proposed to resolve the paternity of the second child provided the petitioner was prepared to accept a compromise regarding his legal claim in the financial settlement of their marital property of spouses. The (now former) wife of the petitioner in response to the constitutional complaint stated the following: "It is true that in the course of the financial settlement of our marital property I proposed to the petitioner a complex solution when the issue of paternity would be addressed while I requested that he refrain from his claim [against me] for the market price of the residential flat the title to which had been transferred onto me by my grandparents in the course of the marriage free of charge. The obligation to pay the petitioner half of the market price of the property represented a substantial financial advantage in favour of the petitioner and thus he cannot claim nowadays that my attitude was immoral. It was the petitioner himself who strictly insisted on the financial settlement of the marital property and on exercise of his rights and although that was in compliance with the applicable law it definitely was not fair from the factual point of view." As mentioned above the petitioner rejected such "a complex solution".

4. Instead, on January 1, 2005 the petitioner filed an application with the Supreme Public Prosecutor's Office seeking judicial declaration regarding the contested paternity pursuant to Section 62 of the Act on Family. The Supreme Public Prosecutor's Office dismissed the application. In her response dated July 18, 2005 the public prosecutor stated that such an application represents "an extraordinary measure" while "the circumstances of a stabilized status of a child may only be interfered with by the public prosecutor inter alia when the statutory fact is satisfied that it is in the best interest of the child to allow the paternity to be contested before court." The public prosecutor emphasized that such a measure would be possible "only in the event it could be reliably established that the father recorded on the grounds of statutory presumption of paternity had not conceived the child." The public prosecutor considered that such a circumstance failed to be

established. She stated that “proof could not be tested through expert opinion in the course of inquiry into a submission” at the same time she stated that a result of a DNA test conducted by a private company “did not under any circumstances represent a proof the public prosecutor may be able to rely on in her prospective inquiry.” As communicated by the public prosecutor, the wife of the petitioner “when inquired by the public prosecutor maintained that at the material time she was intimately involved [solely with the petitioner] and that she contested both her and her son L.’s prospective participation in expert testimony procedure.” The petitioner received a similar response to his application filed in September 2005 seeking a review of his original application.

5. On March 7, 2006 the action of the petitioner seeking judicial declaration regarding the paternity of minor L. S. was submitted with the District Court in Jihlava. The contested decision of the above court dated August 2, 2006 dismisses the action on the grounds of vain expiration of the statutory period of limitation pursuant to Section 5 para. 1 of the Act on Family. However, when deciding the question of costs of proceedings renumeration the Court applied provisions of Section 150 of the Civil Procedure Code and did not award the defendant (the former spouse of the plaintiff) the costs of proceedings due to grounds based on extraordinary circumstances. Such circumstances were mainly seen by the District Court in the fact that based on an anonymous expert report the petitioner was not the biological father of the child and further in the fact that the former wife of the petitioner was involved in an extramarital affair in the course of the marriage while it was established as a fact in divorce proceedings. The decision was affirmed on October 11, 2007 by the Regional Court in Brno in response to the appeal submitted by the petitioner. The verdict on the costs of the proceedings was, however, overturned by the Regional Court in Brno imposing an obligation upon the petitioner to cover the costs of proceedings incurred by his former wife since in the view of the Regional Court the plaintiff must have been aware that his action could not stand pursuant to applicable legislation. The Supreme Court subsequently dismissed as inadmissible the appeal on the point of law submitted by the petitioner in the contested decision dated December 17, 2008 since it did not recognize grounds for admissibility pursuant to Section 237 para. 2 letter c) of the Civil Procedure Code.

B. Arguments of the Petitioner related to Unconstitutionality of Section 57 para. 1 of the Act on Family

6. The petitioner assumed his fundamental right to the protection of family life and private life pursuant to Article 10 para. 2 of the Charter and Article 8 para. 2 of the Convention (points 7 to 9 below) was breached by the courts that applied the contested provision of Section 57 para. 1 of Act on Family. He simultaneously stated that the application of provision of Section 57 para. 1 in connection with the provision of Section 62 of Act on Family resulted in a breach of his fundamental right to seek, via an established procedure, enforcement of his right before an independent and impartial court pursuant to Article 36 para. 1 and 2 of the Charter and pursuant to Article 6 and 13 of the Charter (point 11 below). Finally, the petitioner pointed out interference with the fundamental right to own property (Article 11 of the Charter, point 12). Apart from seeking to have the decisions of ordinary courts set aside the petitioner proposed that the contested provision be

annulled by the Constitutional Court. To support his petition the petitioner relied on the following arguments:

7. Firstly, the petitioner assumes that the determination of the commencement of the statutory period of limitation applicable to submission of the application seeking to have judicial decision issued regarding contested paternity based on the time when the presumed father of the child finds out that the child was born shall not stand in the light of the fundamental right to protection of family and private life pursuant to Article 10 para. 2 of the Charter and Article 8 of the Convention. With reference to the case law of the European Court of Human Rights (hereafter only as "The European Court" or "ECHR") namely to the decision *Kroon and others versus the Netherlands* [the Judgment of ECHR dated October 27, 1994, application No. 18535/91 [all of the judgments referred to hereafter are available in HUDOC database at <http://www.echr.coe.int/ECHR/EN/Header/Case-Law/HUDOC/HUDOC+database/>], the petitioner assumes that Article 8 of the Convention guarantees to have family relations that do not result from biological union set aside (annulled) in order to enable the biological relations and social reality to prevail over legal presumptions and over the requirement of legal certainty relationships and so that any presumption of paternity may be efficiently contested. The petitioner referred to ECHR judgment *Shofman versus Russia* [Chamber Judgment of ECHR dated 24 February, 2005, application No.74826/01], where as assumed by the petitioner the European Court ruled regarding subject matters and factual and legal matters nearly identical to the ones of the petitioner. According to this judgment it is contrary to the Convention to reject modification of the status of a child determined on the grounds of presumption of paternity due to a period of limitation restricting the submission of action challenging paternity while the period of limitation is based on the moment when the father determined by presumption found out about the birth of the child. The European Court finds introduction of a period of limitation within which paternity can be successfully contested justifiable by pursuit of legal certainty in family relations and by protection of the best interest of the child, however, merely in cases when the petitioner established as a fact or had probable cause to assume he was not the father of a minor child since the first day of the child's life and yet due to circumstances unrelated to law he failed to take any action towards contesting paternity within the statutory period of limitation (the petitioner refers to the ECHR Chamber judgment on inadmissibility dated October 19, 1999. application no. 34308/96 and ECHR Chamber judgment dated November 28, 1984 in *Rasmussen versus Denmark*, application no. 8777/79).

8. The petitioner stated that the unsustainable nature of current provisions is repeatedly addressed by the Constitutional Court itself. The petitioner referred to the resolution of the Constitutional Court file no. II. ÚS 289/07 dated April 4, 2007 and resolution file no. III. ÚS 1506/07 dated January 17, 2008 (both texts as well as other decisions of the Constitutional Court referred to are available in NALUS database at <http://nalus.usoud.cz>). The petitioner further referred to the judgment of the Constitutional Court file no. II. ÚS 568/06 dated February 20, 2007 (cf. N 33/44 Coll. of Judgments 399), where the Constitutional Court referring to professional literature sources stated that "the family is, in the first place, a biological connection, and then a social institution, which is only subsequently defined by a legal framework".

9. The petitioner hereby stated that the statutory period of limitation available to contest paternity does not in any manner enforce the trust in personal relations since it creates pressure on the legitimate father to find out his biological paternity in the course of the first six months after the birth of the child. Legal framework must respect social overlap of its relations towards a minor child. Family relations are of crucial importance for the development of the child, its psychological balanced development of the child's personality and in establishing its role within the society. In the case of the petitioner the absence of such ties is obvious. Furthermore, his legal position represents an imposition of a number of obligations upon him. Apart from the duty to provide maintenance there is also the duty to bring the child up with due care. Fulfilment of such duties requires time, emotional and financial investment with no secure guarantee that the minor child itself will not pursue modification of its family status in order to absolve itself from potential obligation towards the petitioner. This leads to an obvious disequilibrium between the obligations of the petitioner and the anticipated obligations of the child.

10. The petitioner assumes that the child itself is equally affected by the circumstances in the instant case. The minor child has, pursuant to Article 8 of the Convention, the right to establish a legal relation with his genuine (biological) father (here the petitioner refers to ECHR judgment dated February 7, 2002, Mikulić versus Croatia, application no. 53176/99) and the child has right to know its parents as conferred by Article 7 of the Convention on the Rights of the Child (declared under No. 104/1991 Coll.).

11. Secondly, the petitioner adds that application of provisions of Section 57 para. 1 in connection with Section 62 of the Act on Family represents a breach of the fundamental right to assert his rights through a legally prescribed procedure before an independent and impartial court pursuant to Article 36 section 1 and 2 of the Charter and to Article 6 and 13 of the Convention. Current legislation does not allow for contesting paternity after expiration of the statutory period of limitation. Although the Act on Family allows the father to file a submission with the Supreme Public Prosecutor's Office seeking to have an application filed to contest paternity, there are no effective procedural means to enforce filing of such application by the Supreme Public Prosecutor's Office. Apart from this, it follows from the response of the Supreme Public Prosecutor's Office to the submission of the petitioner that the Supreme Public Prosecutor's Office has at its disposal no effective means to ensure legal protection of the fundamental rights of the petitioner (the petitioner pointed out the fact that the Supreme Public Prosecutor's Office cannot order an expert evaluation of the child's DNA while a DNA test result provided by a private company upon the initiative of the father cannot be used either). Finally the petitioner referred to certain decisions of the Constitutional Court where the Constitutional Court urged the Supreme Public Prosecutor's Office to review its attitude when it refuses to deal with submissions seeking applications to contest paternity pursuant to Section 62 of the Act on Family with reference to the absence of the interest of the child in modification of family status (apart from the Resolution referred to in point 8 the petitioner referred to Resolution of Constitutional Court file number IV. ÚS 158/06 dated April 4, 2006 and Resolution file number IV. ÚS 466/07 dated May 28, 2007).

12. Finally the petitioner noted the infringement of his fundamental right to own property. The violation of the right to own property pursuant to Article 11 of the Charter may be seen in the obligation to be fulfilled in lieu of the biological parents potentially in lieu of the state as well as in the fact that consequently the child having reached the age of 18 will become an indisputable heir to the estate of the petitioner.

C. Referral to the Plenum of the Constitutional Court of Application seeking to have Section 57 para. 1 of the Act on Family Annulled

13. By a Resolution dated June 23, 2009 file number II. ÚS 405/09-58 the Constitutional Court arrived at the conclusion that by application of Section 57 para. 1 of the Act on Family namely the wording “within six months” a fact occurred that is subject to constitutional complaint and the petitioner simultaneously alleged that the provision in question is contrary to constitutional order. Thus the Constitutional Court referred the petition seeking to have the relevant provision annulled to the Assembly of the Constitutional Court for decision pursuant to Article 87 para. 1 letter a) of the Constitution.

14. Simultaneously the Panel of Constitutional Court noted that the relevant fact occurred through application of the entire provision Section 57 para. 1 of the Act on Family. Should the assessment and annulment of the statutory period of limitation be restricted to the wording “within six months” as proposed by the petitioner, the Court would create an entirely new legal norm stating that the husband of the mother of the child may contest paternity of a child at any time which would lead to a collision with the fundamental rights of a child to protection of private and family right pursuant to Article 8 of the Convention Article 32 para. 4 and Article 8 of the Convention on the Rights of the Child, respectively to collision with a broadly perceived term of the interest of the child the pursuit of which must represent the primary focus in any activity related to children, whether undertaken by public or private facilities of social care, courts, administrative or legislative bodies pursuant to Article 3 para. 1 of the Convention on the Rights of the Child, respectively to a collision with the warranty of special protection of children and adolescents pursuant to Article 32 para. 1 of the Charter.

15. The Panel of the Constitutional Court added that the provision of Section 57 para. 1 of the Act on Family is contrary to the right to respect of private and family life of the father of the child in the sense of the judgment of ECHR Shofman versus Russia (referred to in point 7), contrary to the right to self-determination of the father of the child as a component of the right to protection of privacy and finally contrary to the right to effective remedy available to protection of fundamental rights pursuant to Article 13 of the Convention. In the opinion of the Panel of Constitutional Court the unconstitutional nature of Section 57 para. 1 of the Act on Family lies mainly in the disproportionality of fundamental rights and interests of the father of the child whose paternity was determined on the grounds of the first presumption of paternity, rights of the child and the child’s mother. The unconstitutional nature of the relevant provision due to collision with the interest of the child cannot be excluded. Thus, pursuant to Article 78 para. 2 of the Act on Constitutional Court the Panel of the Constitutional Court decided to refer the application seeking to have the entire provision of Section 57 para. 1 of the Act on Family applied in the instant matter struck down and thus establishing procedural

leeway for the Plenum of the Constitutional Court for complex assessment of the colliding fundamental rights.

II. Summary of Statements of Parties to the Proceedings

16. The Constitutional Court requested the file documents and invited the parties to the proceedings to submit their opinion on annulment of the contested provision. Due to the competence and scope of authority the Ministry of Justice was also invited to submit its opinion.

17. The Senate of the Parliament of the Czech Republic in its opinion signed by its Chairman stated that the contested provision has been included within the Act since the commencement of its validity having come into force on April 1, 1964 with no amendments applicable. Since the Senate of the Parliament of the Czech Republic was established as late as in 1996 it is obvious that it did not participate in approval of the relevant provisions.

18. The Chamber of Deputies of the Parliament of the Czech Republic in its opinion signed by the Deputy Chairperson Miroslava Němcová summarized the relevant part of the assessment report for the relevant Bill of Act on the Family that included the contested provision as well as the legislative procedure in the National Assembly of the Czechoslovak Socialist Republic in its third term of office. At the same time it added that in spite of the extensive amendments to the Act on the Family in the subsequent years the relevant provision has never been modified.

19. The Ministry of Justice in its opinion stated that the legal means applied when determining paternity stem from several social requirements. The fundamental social requirement is to ensure that the child has both parents. Another requirement is to ensure in the highest possible number of cases that the legal relation is identical with the biological one. Last but not least it is desirable to determine the relationship as soon as possible after the birth of the child in order to comply with the requirement of the maximum stability of the legal relation of the parent and the child. Application of all of the requirements is to be governed by the principle of the protection of the best interest of the child. In the opinion of the Ministry of Justice the absence of biological relationship between the petitioner and the second interested party (the child the paternity of whose is contested by the petitioner) is established. It is necessary to assess the question of whether maintenance of the discrepancy between the legal relation and the factual matrix is in the best interest of the child or not. Under such circumstances the Supreme Public Prosecutor should have paid more consideration to the option of submitting the application seeking to contest the paternity since the instant circumstances meet the statutory requirements under which such course of action may be adopted. It is not sufficient to rely on the general notion that contesting the paternity of a man who obviously is not the biological parent of the child and who has no other emotional relationship the child might benefit from is not in the interest of the child. The Ministry of Justice disagrees with the proposal to annul the contested provision of the Act on the Family and yet with respect to the fact that the current legal framework and current practice of judicial bodies relying on the provision are contrary to the adjudication of Constitutional Court and the

European Court, the Ministry proposes to undertake amendment of the law. The amendment should specify the circumstances under which the application seeking to contest the paternity may be filed after the statutory period of limitation has expired in cases when it is neither in the interest of the child nor in the interest of the father recorded in the registry to maintain the discrepancy between the legal and factual matrix.

20. The Public Defender of Rights does not represent a party to the proceedings on applications by the petitioner seeking to have provisions of Section 57 para. 1 of the Act on Family annulled yet: he submitted his opinion on the application based on his position of guardian ad litem of the minor Z. S. in the proceedings on constitutional complaint. In his opinion he did not recommend granting the application with regard to the stable system of statutory paternity presumptions and the time restrictions on the act of contesting paternity on the grounds of the desired stability of a family representing the fundamental social unit. At the same time the Public Defender of Rights noted the obvious conflict of several interests protected by the Constitution - apart from the legitimate interest to contest the paternity recorded within registry as opposed to the paternity determined via exact means and the right of the child to know its parents and the right of the mother to protect her honour and privacy must be respected as well as the right of the child not to have its private life interfered with, honour and good reputation. The Defender further noted the absence of legal framework enabling the courts to impose upon the parties to the proceedings (the father recorded in the registry, the mother and the child) the obligation to undergo DNA testing and the risk of undergoing such a test in a not fully professional and expert manner.

III. Wording of the Contested Legal Provision

21. Provision of Section 57 para. 1 of the Act on Family reads: “A husband may, within six months from the date on which he finds out his wife delivered a child, contest before court that he is the father of the child.”

IV. Constitutional Conformity of the Legislative Procedure

22. Pursuant to Article 68 para. 2 of the Act on the Constitutional Court in the proceedings on annulment of laws and other legal regulations the Constitutional Court tests whether the contested act or other legal regulation was enacted and published within the framework of the scope of authority and competence set forth by the Constitution and in a constitutionally prescribed manner. As follows from the opinions of the parties to the proceedings the contested provision was incorporated in the original wording of the Act on Family dated 1963 while not being modified by any amendments. Assessment of the legislative procedure would thus mean assessment of compliance with constitutional regulations that are no longer valid and that were applicable at the time of enactment of the Act. Based on Article 66 Section 2 of the Act on the Constitutional Court pursuing a petition shall further be inadmissible if, prior to its delivery to the Court, the constitutional act or the statute, with which the enactment under review is alleged to be in conflict, lost force and effect, the Constitutional Court thus notes that in the event

of legal regulations published prior to the Constitution coming into force on January 1, 1993 it is entitled to assess merely the compliance of the content with the current constitutional order and not the constitutional nature of the procedure, the origin of the regulations and their compliance with the norm-making authority (cf. Judgment dated October 27, 1999 file number Pl. ÚS 10/99, N 150/16 SbNU 115, 290/1999 Coll.). Thus in the instant matter the Constitutional Court was unable to assess the mentioned procedure.

V. The Review

A. Foundations of the Review from the Point of View of the Right to Protection of Private and Family Life

23. The right to protection of private and family life pursuant to Article 10 para. 2 of the Charter and Article 8 of the Convention prevents the public authorities from arbitrary interference with such an intimate sphere of each and every individual as represented by relations between parents and a child. Those relations amount to the most natural expression of human identity and the right of a democratic and free society must respect their existence. Neither the substance nor the nature of family relations is primarily based on law; the law merely awards protection to their real-life existence. Such protection cannot be ensured solely by an obligation to adhere to certain principles on the side of public authorities. The state is, at the same time, obliged to enact legislation that will ensure legal recognition of family relations and will determine the content of such relations both in relations among the family members and relations towards third parties.

24. The legal determination of family must, by nature of the matter, reflect mainly the existence of biological relations. Thus follows the requirement that the legal determination of paternity corresponds to the biological father unless the case is the one of adoption. This requirement is reflected in the subjective right of the child's father so that his biological paternity is respected by public authority. The right of the child to know its parents expressly set forth by Article 7 Section 1 of the Convention on the Rights of the Child also appears to correspond to that.

25. The importance of biological relations for their legal determination had already been emphasized by the Constitutional Court in its judgment file no. II. ÚS 568/06 dated February 20, 2007 (N 33/44 SbNU 399). Therein the Constitutional Court ruled on a constitutional complaint related to the application seeking to contest paternity filed pursuant to Section 62 of the Act on Family by Supreme Public Prosecutor in response to the submission of the grandmother of the child who questioned the paternity of the father determined by law of the child of her deceased daughter. There the Constitutional Court noted in its judgment that "when there is a conflict between the interests of persons with blood ties, between whom social ties forming the typical features of a family also demonstrably exist, and the interest of unrelated persons, between whom and the child there were also formed in the past, as a result of long-term co-habitation, the above-mentioned emotional, social, and other ties, which would otherwise form the features of de facto family ties, it is necessary - if there is no other compelling reason - to provide protection to those family ties which, besides emotional and social ties, also have the blood relationship."(cf. Collection of Judgments, 114).

26. On the other hand the insurance of the general requirement of compliance between the biological father and the one determined by the law cannot lead to disproportionate interference with the private life of the parents of the child amounting to the obligation to inform the public authorities on facts of their intimate life. Such obligation would be unavoidable in the event the issue of paternity had to be determined beyond reasonable doubt. Such obligation would, however, from the point of view of the right to protection of privacy in a principal and fundamental manner disproportionately interfere with both the private sphere of individuals and the existence of mutual trust of the parents of the child. Legal paternity is thus determined on the grounds of statutory presumptions that stem from the cultural framework of the society and enable the paternity to be determined without excessive formal requirements. So-called marital presumption of paternity set forth by Section 51 para. 1 of the Act on Family complies with the above principles when, simply stated, the husband of the mother is deemed to be considered the father of the child. Such presumption that had already been expressed in Roman Law (*pater est quem nuptiae demonstrant*, thus "the father is the one who married the woman") stems from the assumption that the husband of the mother is at the same time the true father of the child.

27. The presumption itself cannot, understandably, guarantee the true existence of agreement of the legal and biological paternity. Potential discrepancy between legally determined and biological paternity gives rise to the legitimate question in what manner removal of such discrepancy should be ensured. The fact that such circumstance interferes with the family sphere of the legal father who is not the biological father of the child and whose legal paternity was determined solely by presumption of paternity cannot be omitted. In this manner the circumstance is reflected within the legal father's family and private life in the scope determined by Article 10 para. 2 of the Charter and at the same time it may interfere with the right of the child to know its parents pursuant to Article 7 para. 1 of the Convention on the Rights of the Child (compare the above points 23 and 24 of this Judgment)

28. The right to remove the discrepancy between the legal and biological paternity is supported by the father's applications seeking to contest paternity pursuant to Section 57 para. 1 of the Act on Family. This provision primarily addresses the status of a legal father of a child following their presumed family relation. The objective pursued by this provision may undoubtedly be considered to be compliant to the interest that the legal determination of the father corresponds to the biological paternity. On a general level the conclusion can be found compatible with the rights of the child to know its parents expressly set forth in Article 7 para. 1 of the Convention on the Rights of the Child.

29. Still the requirement of the agreement between the legally determined and the biological parent cannot be held absolute. The legal relation of the father and child does not amount to a mechanical reflection of the existence of a biological relationship since in time even if such biological relation is absent such a social and emotional tie can develop between the legally determined father and the child that from the point of view of the right to protection of private and family life this relation will be within the ambit of legal protection. In such a case further duration

of legal relations will be dependent on more factors among which the interest of the child will have an important role - pursuant to Article 3 para. 1 of the Convention on the Rights of the Child such an interest has to be the primary concern in decision-making activity of public authorities while, however, the child has the right to know its parents conferred by Article 7 para. 1 of the above Convention. However, the interest of the biological father who is not awarded the status of legal father and is seeking such a status cannot be denied as irrelevant nor can the interest of the legal father who is not the biological father and is contesting his paternity be dismissed. The right to the protection of private and family life of the mother of the child must also be assessed.

30. With respect to the above circumstances it is necessary to deal with the question whether the right to protection of private and family life conferred onto the legally determined father of the child in Article 10 para. 2 of the Charter and Article 8 of the Convention asserts the right of the legal father to seek to have the legal circumstances of disagreement between biological and legal paternity removed by public authorities and if so, under what conditions. While seeking to answer this question other rights and interests defined within the previous section of this Judgment must be considered.

31. The Constitutional Court has not yet addressed this question directly. In its adjudication the Court has been mainly confronted with constitutional complaints of petitioners directed against communication notice by the Supreme Public Prosecutor informing them that their submission initiating application seeking to contest paternity pursuant to Section 62 of the Act on Family is suspended. In relation to this the Constitutional Court has repeatedly stated with reference to the above-mentioned decisions of the European Court that “the current legal matrix when the husband has the right to contest the paternity only within the period of limitation of six months after the birth of the child...and when the Supreme Public Prosecutor’s Office rejects to file the mentioned application may under certain circumstances collide mainly with Article 8 of the Convention.....and of course with the fundamental rights and basic freedoms guaranteed by the constitutional order..” (Resolution file number III. ÚS 289/07 dated April 26, 2007, Resolution file number III. ÚS 1506/07 dated January 17, 2008.) At the same time the Constitutional Court urged the Supreme Public Prosecutor’s Office to take regard to adjudication of European Court when interpreting the Article 8 of the Convention in assessing whether to file the action pursuant to Section 62 of the Act on family or not.

32. Pursuant to Article 8 of the Convention the state parties to the Convention are not only bound by the obligation to protect the individuals from arbitrary acts of public bodies but also a positive obligation to ensure effective respect towards private and family life. This might also mean an obligation to adopt measures that affect legal relations among individuals (compare judgment *Mikulić versus Croatia*, cited in section 10, section 57 and other cited judgments). Regard must be taken to fair balance that is to be achieved between the competing interests of individual and the society as a whole. In both cases the state has at his disposal certain discretion (compare judgment *Mikulić versus Croatia*, cited in section 10, section 57 and other cited judgments). The limits of such discretion are outlined by further adjudication of the European Court.

33. In its judgment in *Kroon versus the Netherlands* (quoted in point 7) the European Court noted that it is not permissible for the legal presumption of paternity to prevail over biological and social facts unless regard is paid to both the established facts and the wishes of the interested individuals. The European Court analyzed this conclusion in its judgment in *Shofman versus Russia* (quoted in point 7 of this Judgment) when it recognized a breach of the fundamental right of the petitioner pursuant to Article 8 of the Convention as a result of absence of opportunity to contest paternity. The legislation therein only allowed for such option within the statutory period of one year from the date when the person officially recorded in the registry as father finds out that the birth of a child has been recorded. The relevant judgment does not recognize that the Convention is violated as a result of the very existence of the statutory period of limitation of one year within which paternity can be contested but as a result of such a period of limitation being tied to the date when the husband of the mother of a child learns that the birth of a child has been recorded while no other means were provided to the father determined by the presumption of paternity to contest the paternity in circumstances when even a court deemed him not to be the biological father.

34. The statutory period of limitation available to contest paternity had previously been accepted by the European Court in its earlier decisions when it emphasized that introducing a period of limitation regarding the proceedings seeking to contest paternity is justifiable by the pursuit of legal certainty in family relations and pursuit of protection of the interests of the child (judgment *Rasmussen versus Denmark*, quoted in point 7, point 41). The European Court further found in another matter that as soon as the period of limitation available to the petitioner to contest the paternity has expired, more weight was accorded to the protected interests of the child than to the interests of the petitioner to contest the paternity (decision on admissibility in *Yildirim versus Austria*, quoted in point 7). The fact whether the petitioner knew with certainty or had reasons to assume that he is not the biological father of the child from the very birth of the child and failed to take action to contest presumption based paternity is relevant to the assessment. When assessing the infringement of Article 8 of the Convention is thus rather concerned with defining the conditions of determination of the period of limitation available to contest paternity rather than the very existence of such period of limitation.

35. The last above-mentioned decisions of the European Court were reflected by the Constitutional Court within the assessment of the constitutional complaints directed against the procedure adopted by the Supreme Public Prosecutor. In its Resolution file number IV. ÚS 2058/07 dated March 3, 2008 (U 3/48 SbNU 977) the Constitutional Court noted that “it is clearly established by the content of the submitted application that the petitioner had doubts of substantial nature regarding his paternity as early as in the course of the statutory period of limitation within which he was allowed to pursue the right denied to him by submitting an action; had he not assumed such doubts, he would certainly have not had any reason to verify the circumstances by initiating a DNA test. However, then the indifferent approach of the petitioner towards the statutory period of limitation available for submission of the action (whether it be for either lack of knowledge regarding the period of limitation or other reasons) appears to represent

an action - or rather more precisely said 'absence of action'- leading to the consequence against the petitioner expressed by an ancient principle formulated by Justinian: 'vigilantibus, non dormientibus iura subveniunt' - 'the law assists those that are vigilant with their rights, and not those that sleep thereupon'. Thus, initially not the communication by the Supreme Public Prosecutor's Office addressed to the petitioner after the expiration of the statutory period for paternity action but the circumstances brought upon by the petitioner himself - due to his inactivity regarding the paternity action - resulted in the situation that in deed could be generally viewed as contrary to the fundamental right "...to respect of family life" (cf. Coll. of Judgments, 981 - 982).

36. In the light of the above conclusions of the Constitutional Court and the European Court it can be summarized that the question of existence of agreement between biological and legal paternity is reflected in the fundamental right of an individual in the position of the legally determined father who alleges that he is not the biological father to the protection of private and family life pursuant to Article 10 Section 2 of the Charter and Article 8 of the Convention as well as in the right of the child to know its parents conferred by Article 7 Section 1 of the Convention on the Rights of the Child. Equally the marital presumption of paternity with no sufficient opportunity to legally contest the agreement of legal and biological paternity and at the same time to seek declaration that the legal paternity is void in the case it disagrees with the biological paternity may under certain circumstances represent breach of such a right. A conclusion cannot be arrived at that the continuation of legal paternity which is in disagreement with biological paternity amounts to a breach of the fundamental right of the legal father to private and family right by a public authority. Regard must necessarily be paid to the fact of whether the interest of the child exists in continuation of such status as well as whether the legal father had or might have had the knowledge of the fact that he is not the biological father of the child, whether he had the opportunity to seek determination before a public body that he is not the legal father of the child and finally whether he made use of such an opportunity.

B. Assessment of the Petition

37. The matter of constitutional assessment in the instant case is the question of whether the opportunity to contest paternity within the six month statutory period of limitation commencing at the time when the husband learns of the birth of a child to his wife will stand from the point of view of constitutionally guaranteed rights of the legal father - thus of the individual the paternity of whose is determined by the law by marital presumption. The Constitutional Court has repeatedly addressed the issues of the constitutional nature of period of limitations in a number of its judgments while it noted that a statutory period of limitation prima facie does not and cannot in itself bear any elements of unconstitutionality. Such elements may appear only from the "specific circumstances" of the evaluated matter, in other words, "evaluation of the constitutionality of a period of limitation/deadline is an evaluation in context" [judgment file number Pl. ÚS 6/05 dated December 13, 2005] (cf. N 226/39 Coll. of Judgments 389; 531/2005 Coll.). Such specific circumstances include, in reliance on current case law of the Constitutional Court, mainly disproportionality of the period of limitation in relation to the opportunity to enforce a constitutionally guaranteed right being

limited by a period of limitation [cf. Judgment file no. Pl. ÚS 5/03 dated July 9, 2003). (cf. N 109/30 Coll. of Judgments 499; 211/2003 Coll.)] or arbitrariness of the legislature in establishing the period of limitation (its codification or annulment) [cf. Judgment file no. Pl. ÚS 2/02 dated March 9, 2004 9 (N 35/32 Collection of Judgments 331; 278/2004 Coll.)].

38. Although legal presumptions of paternity as mentioned earlier simplify the determination of paternity in a significant manner, they cannot by the nature of the matter be deemed to represent sufficient guarantee of agreement between biological and legal paternity. It is thus necessary for the legal order to establish other means apart from such presumptions that will serve the purpose to the individual whose paternity was determined by presumption and who is contesting his biological paternity to seek protection of his subjective rights by establishing in proceedings before a public authority that he is not the biological father of the child.

39. Such requirement does not only follow from the right to the protection of private and family life as analyzed in detail by the Constitutional Court in the previous part of this Judgment but is in essence related to the right to have one's subjective rights protected before court conferred upon each and every individual by Article 36 Section 1 of the Charter.

40. Paternity action that may be filed by the Supreme Public Prosecutor pursuant to Section 62 of the Act on Family cannot be deemed to represent legal means of protection of the fundamental right of the legal father. Such action pursues a different objective than action submitted pursuant to the contested provision. The Supreme Public Prosecutor may file the above action solely in the interest of the child. Such interest, however, will not be identical to the one of the legal father. If we take regard of the fact that in the instant case the petitioner's child is a minor one, the legal relation between the legal father and the child will, by nature of the matter and not only in this case, pursue mainly the interest of the minor child and thus it will hardly be possible to anticipate that the supreme public prosecutor will file paternity action.

41. Equally the fact that there is no legal entitlement to have the paternity action filed by the Supreme Public Prosecutor and that it is solely at the discretion of the Supreme Public Prosecutor to file such a submission cannot be disregarded. A potential submission of a father determined by marital presumption seeking to initiate such action does not represent an application to initiate the proceedings itself; it does not initiate proceedings in which a decision must be issued that would be subject to judicial review regarding the application of the discretionary power of the public prosecutor. This has repeatedly been affirmed by the Constitutional Court when it noted in certain decisions that the procedure adopted by the Supreme Public Prosecutor or their memorandum informing the author of the submission that the action shall not be filed "cannot be deemed to represent infringement by a public authority pursuant to Article 72 para. 1 letter a) of the Act on the Constitutional Court (cf. i.e. Resolution file No. IV. ÚS 2058/07 cited in point 35, cited in Collection of Judgments 982, in detail in Resolution file no. III. ÚS 289/07 dated April 24, 2007). It thus means that it is entirely at the discretion of the Supreme Public Prosecutor to assess the question of interest of the child and its

potential agreement with the interest of the legal father in a specific matter while the discretion of the supreme public prosecutor is not subject to judicial review. On the problematic issue of regarding the application of the supreme public prosecutor seeking to have the paternity contested compare forward the source of Jíšová, A.: Application of the Supreme Public Prosecutor seeking to have the paternity contested in practice (for discussion). Bulletin of Advocacy. 11-12/2006, pg. 80 to 86.

42. On the other hand, the contested provision of Section 57 para. 1 of the Act on Family undoubtedly confers one of the above mentioned means mentioned in point 37 since it allows for the husband of the mother of the child to contest the paternity by paternity action that must be filed within the statutory period of limitation of six months from the day on which the father learned of the birth of the child to his wife. Thus certain procedural leeway is established for the husband of the mother to seek protection of his rights by determining he is not the true father of the child, for which reasons cannot be deemed the legal father. It must, nevertheless, be assessed whether the circumstances for application of the contested provision respect the limits determined by law in order to protect private and family life, addressed in detail in the previous part of this Judgment as well as the right to judicial protection pursuant to Article 36 para. 1 of the Charter.

43. The contested provision restricts the opportunity to file paternity action to the period of six months from the day when the husband of the mother learned that a child has been born to his wife. It is obvious that in the vast majority of cases to which the relevant provision will apply the day when the husband will learn of the birth of the child will be identical to the one of the date of birth of the child. Such definition of the statutory period of limitation, however, entirely denies the substantial nature of time at which the man whose paternity was based on marital presumption learns relevant facts questioning his paternity. And yet, it is clear that it is only from such a time when the legal father has a real opportunity to assess the consequences of such findings on his personal life including the opportunity to turn to the relevant public authority with an application seeking to contest his paternity.

44. The period of limitation set forth in such a manner fails to reflect the specific nature of legal relations between the legal father and the child. When establishing the statutory period of limitation for paternity action presumption that the legal father had to have or should have had the knowledge of all relevant circumstances leading to his potential interest in contesting paternity at the time when he learned of the birth of the child to his wife cannot be relied on. Equally the requirement cannot be imposed upon the husband to undertake preventive review of certain circumstances potentially establishing that he is not the biological father of the child within the first six months since the birth of the child. The determination of an effective opportunity to seek protection of one's right must also reflect the other side of the right to protection of private and personal life prohibiting the state from arbitrary and disproportionate manner of interference with private and family life of an individual. This means that the legal provisions may not ignore the fact that a substantial legal interest in contesting paternity may arise in a (sometimes significant) time interval after the birth of the child and

neither may they ignore the fact that even at such time the interest of the father in denying paternity may prevail as indicated by adjudication of ECHR (compare ECHR Judgment Shofman versus Russia, cited in point 7 or ECHR Chamber Judgment Paulík versus Slovakia dated October 10., 2006, application no. 10699/05, where the applicant successfully sought to contest paternity more than 30 years after the birth of the child).

45. On those grounds the Constitutional Court arrived at the conclusion that the contested provision of Section 57 para. 1 of Act on Family is contrary to Article 10 para. 2 of the Charter and Article 8 of the Convention as well as contrary to Article 46 of the Charter.

VI. Wording of Derogatory Statement and Legal Effect of the Derogatory Statement on Legislature and Ordinary Courts

46. The Constitutional Court held in response to the proposition of the Second Panel of Constitutional Court to annul the entire contested provision of Section 57 para. 1 of Act on Family. In this light the Court emphasizes that the above reasons do not in any manner undermine the constitutionality of the opportunity to file a paternity action in the period of limitation within six months from the date when the father learns of the birth of a child to his wife. Derogatory grounds do not effect the entitlement that had not been contested in itself by the petitioner but on the exclusion of the submission of paternity action after expiration of the period of limitation. The Constitutional Court was not able to grant the petition solely in relation to the wording “within six months”, thus in the extent in which the petitioner sought to have the contested provision annulled.

47. By such procedure applied by Constitutional Court a new legal norm would be established enabling paternity actions regardless the infringed rights and protected interests of individuals other than the legal father of the child who intends to contest his paternity defined in point 29 of this Judgment. Derogatory judgment would thus remove the infringement of fundamental rights of legal father but at the same time establish infringement of fundamental rights and protected interests of other interested individuals.

48. As noted above by the Constitutional Court the determination of definite limitation period for paternity action is not in itself unconstitutional; such period of limitation and circumstances of its duration must, however, well as the limitation period itself be defined so as to respect all concerned rights and protected interests in a balanced manner.

49. An option arises that the legal father determined by marital presumption would be awarded an opportunity to file a paternity action contesting paternity for a certain period of time regardless further circumstances (fundamental rights and protected interest defined in point 29 of this Judgment) as is the current case. In such case, however, the period of six months is to be considered as disproportionately short and the determination of commencement on the day when the husband of the mother learns of the birth of the child (Section 57 para. 1 of the Act on Family) is equally problematic as follows from reasoning provided in detail

above in Section 44 of this Judgment. In Slovak Republic the originally three years long statutory period of limitation was replaced by period of limitation in the duration of three years.

50. Even after expiration of the period of limitation construed in such a manner the paternity actions cannot be denied entirely to individuals who might have a legitimate interest in contesting paternity (defined in point 29 of this Judgment) mainly lying in protection of their fundamental rights. Currently Section 62 of the Act on Family allows for submission seeking to contest paternity regardless the passage of time, nevertheless only with regards to the interest of the child. As has already been stated in the above points 40 and 41 of this Judgment such application cannot be deemed to represent sufficient means of protection of rights pursuant to Article 36 of the Charter and it is a question what is the justification behind such application in the legal order of a democratic rule of law state. In relation to this it does not appear uninteresting to mention that this legal tool was first established in the legal order applicable within the territory of current Czech Republic within the so called race-oriented legislation (Section 2 para. 3 of the Government Decree No. 180/1941 Coll., by which certain regulations regarding disputes on family or blood-related origin are issued).

51. To ensure protection of fundamental rights and protected interest defined in point 29 of this Judgment it is thus necessary to amend in a special manner the application seeking to contest paternity that might be submitted in the interest of the protection of such rights and protected interests of the relevant individuals, including legal father whose special period of limitation allowing for the submission of such application specified in point 49 above has already expired. When construing the admissibility of such application the fact must be regarded whether the legal father might have learned the circumstances casting doubts over his paternity and whether having knowledge of such circumstances he took legal action to contest his paternity and whether the act of contesting the paternity is not hindered - in the specific case and not in general - by other protected interests, mainly the interest of the child to which privileged and yet not an absolute status is assigned by Article 3 para. 1 of the Convention. Thus when establishing new period of limitation affecting other presumptions of paternity and other entitled entities the legislature should regard the interest of all interested parties to the proceedings with special emphasis placed on the interest of the child and stability of family relations as well as the need of family background for the upbringing of the child. Should the legislature amend the opportunity to waive even the newly established limitation period in entirely special and justifiable cases that are by current legislation solely at the discretion of the Supreme Public Prosecutor not only must the legislature stipulate clear conditions for such a waiver of period of limitation but also clear limitations in the interest of the protection of the rights of the child and the mother. From the point of evidentiary issues in paternity disputes the procedural regulation will have to be amended accordingly regarding the evidentiary tools allowing for the expert opinions in the area of healthcare and branch of genetics, conducted via the method of DNA polymorphism testing with obligatory participation of the presumed father, the child and the mother.

52. Since the derogatory reasons do not relate to the possibility of submission of paternity action in the period of limitation stipulated by the contested provision

but to the exclusion of application of the limitation period at a later date and regarding the necessity of establishing sufficient time scale for a complex assessment and enactment of new legislation, the Constitutional Court held pursuant to Section 70 of the Act No. 182/1993 Coll., on the Constitutional Court that the contested provision shall be annulled as off December 31, 2011.

53. To conclude the Constitutional Court adds that the assessment of the compliance of the Act or of another legal regulation in proceedings pursuant to Section 64 and subs. of the Act No. 182/1993 Coll. on the Constitutional Court in its latest wording is not reflected merely in the sphere of validity of the legal regulation but also in the sphere of applicability of the relevant regulation. The Constitution itself does not restrict the protection of fundamental rights and freedoms in the case when the grounds for their infringement rest in the application of unconstitutional legal norm merely to the annulment of such legal norm by the Constitutional Court but assumes that the conclusions of the Constitutional Court will be reflected in relation to the application of such norm by public authorities. Such conclusion is obvious from the consistent adjudication of the Constitutional Court that allows for the review of an annulled Act upon a petition of an ordinary court pursuant to Article 95 para. 2 of the Constitution in the event that it arrives to the conclusion that it is contrary to the constitutional order; c.f. i.e. Judgment file no. Pl. ÚS 38/06 dated February 6, 2007 (cf. N 23/44 Coll. of Judgments 279; 84/2007 Coll.). In such a case it is not decisive whether the concerned Act had been annulled but whether the legal norm contained within the wording of such an Act is still applicable and the assessment of the question of constitutionality is a necessary presumption for the decision of the court in the matter itself. The Constitutional Court thus does not rule on annulment of an Act that has already been annulled but on its applicability while the consequence of the academic statement on collision with the constitutional order lies in non-applicability of the concerned legal provision should not only the legal provision and thus the legislative tool be contrary to the constitutional order but should this be the case also for the purpose or definition of the circumstances under which the purpose intended by the legislature may be achieved in a constitutionally conforming manner, that means by direct application of the constitutional order; c.f. Judgment file no. Pl. ÚS 35/08 dated April 7, 2009 (151/2009 Coll.).

54. The above conclusions were relied on by the Constitutional Court in the instant case. The potential consequence in the form of non-applicability of the Act cannot be restricted solely to the proceedings on application by an ordinary court pursuant to Article 95 para. 2 of the Constitution as it is related to all other cases when the Constitutional Court notes collision of an Act with constitutional order and the relevant derogatory reason affects the legal status of an individual with respect to the fundamental rights and freedoms. Moreover, in the instant case the petitioner in question filed the application seeking to have an Act annulled as well as the constitutional complaint while pursuing protection of his fundamental right. The Constitutional Court thus notes that establishing a later date for annulment of the contested provision may not lead to the conclusion that the ordinary courts are obliged to apply the concerned provisions in the extent in which it is affected by the derogatory reason should as a result of such application a possibility arise of interference with a fundamental right or with freedom of a party to the proceedings.

55. In relations to Section 57 Article 1 of the Act on Family this means that should the legal father determined by the marital presumption learn of facts that would cast doubt over his biological paternity in the course of or after the expiration of limitation period for paternity action the ordinary courts are obliged to refrain from application of the concerned period of limitation and assess the action in question even if the action is submitted after the expiration of limitation period. Non-application of such period of limitation does not, however, mean absence of time constraint with regards to such action. The Constitutional Court did not find that the existence of the period of limitation as such was unconstitutional but held that the exclusion of an opportunity to contest legal paternity in a legally relevant manner was unconstitutional. Should the ordinary courts assess the action in question they will not only have to assess the question of paternity but also the question of the concerned rights and protected interests defined in point 29 of this Judgment. Until the legislature issues a new decision on definition of period of limitation for paternity action this thus means also assessing whether the action will stand from the point of view of proportionality of interference with the rights and protected interest of other persons mainly with regards to the time elapsed from the date when the facts relevant for paternity action were learned.

Note: Appeal against this decision is inadmissible.